

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

May 15, 2009

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B5200292
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE (313) 566-9000
Wolinski & Company, C.P.A., P.C. 300 River Place, Suite 1400 Detroit, MI 48207 marinahoughton@wolinski.com		Marina Houghton, CPA
		BUYER/CA (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: James Hennessey (517) 335-5323 Medicaid Long-term Care Provider Audits – Department of Community Health		
CONTRACT PERIOD: From: June 1, 2005 To: May 31, 2010		
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS		N/A

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby **EXTENDED** to May 31, 2010, and **INCREASED** by \$602,640.00. All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 3/23/09), vendor agreement (letter dated 3/31/09), Ad Board approval on 4/21/09 and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$3,990,390.00

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

May 23, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B5200292
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE (313) 566-9000	
Wolinski & Company, C.P.A., P.C. 300 River Place, Suite 1400 Detroit, MI 48207 marinahoughton@wolinski.com		Marina Houghton, CPA	
		BUYER/CA (517) 241-4225 Kevin Dunn	
Contract Compliance Inspector: James Hennessey (517) 335-5323 Medicaid Long-term Care Provider Audits – Department of Community Health			
CONTRACT PERIOD:		From: June 1, 2005	To: May 31, 2009
TERMS	N/A	SHIPMENT	N/A
F.O.B.	N/A	SHIPPED FROM	N/A
MINIMUM DELIVERY REQUIREMENTS N/A			

NATURE OF CHANGE(S):

Please note that this Contract is hereby **EXTENDED** to May 31, 2009, and **INCREASED** by \$960,000.00. All other terms, conditions, specifications and pricing remain unchanged.
NOTE The DMB Buyer is changed to Kevin Dunn (517) 241-4225.

AUTHORITY/REASON:

Per agency request, vendor approval and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$3,387,750.00

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

May 15, 2006

**CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B5200292
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE (313) 566-9000	
Wolinski & Company, C.P.A., P.C. 300 River Place, Suite 1400 Detroit, MI 48207 marinahoughton@wolinski.com		Marina Houghton, CPA	
		BUYER/CA (517) 335-4804 Douglas Collier	
Contract Compliance Inspector: James Hennessey (517) 335-5323 Medicaid Long-term Care Provider Audits – Department of Community Health			
CONTRACT PERIOD:		From: June 1, 2005	To: May 31, 2008
TERMS	N/A	SHIPMENT	N/A
F.O.B.	N/A	SHIPPED FROM	N/A
MINIMUM DELIVERY REQUIREMENTS N/A			

NATURE OF CHANGE(S):

Please note effective May 2, 2006, this contract is hereby **INCREASED \$1,314,000.00** All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per DMB/Acquisition Services approval.

INCREASE: \$1,314,000.00

Estimated Contract Value: \$2,427,750.00

**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. 071B5200292
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE (313) 566-9000
Wolinski & Company, C.P.A., P.C. 300 River Place, Suite 1400 Detroit, MI 48207 marinahoughton@wolinski.com		Marina Houghton, CPA
		BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: James Hennessey (517) 335-5323 Medicaid Long-term Care Provider Audits – Department of Community Health		
CONTRACT PERIOD: From: June 1, 2005 To: May 31, 2008		
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

The terms and conditions of this Contract are those of **ITB #071I5200053**, this Contract Agreement and the vendor's quote dated **11/16/2004**. 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: **\$1,113,750.00**

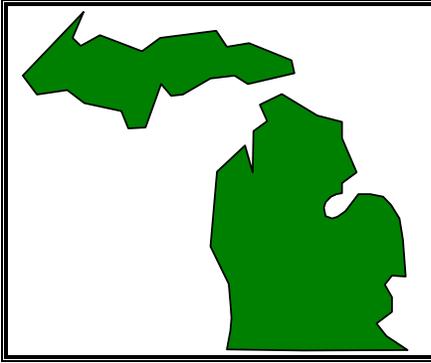
**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 ACQUISITION SERVICES
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B5200292
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR <p style="text-align: center;">Wolinski & Company, C.P.A., P.C. 300 River Place, Suite 1400 Detroit, MI 48207</p> <p style="text-align: right; font-size: small;">marinahoughton@wolinski.com</p>	TELEPHONE (313) 566-9000 Marina Houghton, CPA BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: James Hennessey (517) 335-5323 <p style="text-align: center;">Medicaid Long-term Care Provider Audits – Department of Community Health</p>	
CONTRACT PERIOD: From: June 1, 2005 To: May 31, 2008	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #071I5200053, this Contract Agreement and the vendor's quote dated 11/16/2004. 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.</p> <p>Estimated Contract Value: \$1,113,750.00</p>	

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

FOR THE VENDOR: <p style="text-align: center;">Wolinski & Company, C.P.A., P.C.</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	FOR THE STATE: <hr/> <p style="text-align: center;">Signature Sean L. Carlson</p> <hr/> <p style="text-align: center;">Name Director, Acquisition Services</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
---	---



**STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services**

DCH Auditing Services

Buyer Name: [Doug Collier](#)
Telephone Number: [517 335-4804](#)
E-Mail Address: collierd1@michigan.gov



DCH Auditing Services

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Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

To conduct federally required compliance audits, primarily of a financial nature, of the Medicaid program and Medicaid providers. While other entities or programs funding primarily with state dollars may be selected for review such as Local Health Departments and nonprofit agencies, the audits will predominately involve Long-Term Care providers certified to participate in Michigan's Medicaid Program and Community Mental Health Services programs that provide contractual Specialty Mental Health and Supports Services under an approved federal Waiver. The majority of the entities are located in Southeastern Michigan. Southeastern Michigan is defined as the counties of Livingston, Macomb, Monroe, Oakland, Washtenaw and Wayne.

1.002 BACKGROUND

A. Long Term Care

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to states for medical assistance to low income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program (hereinafter referred to as Medicaid) is jointly financed by the State and Federal Governments, and administered by the states.

Michigan established its program for Medical Assistance statutorily under Title XIX of the Social Security Act through enactment of Section 105 of P. A. 1966. The Michigan Department of Social Services was designated as a single state agency responsible for the administration of the program. In 1996, this responsibility was transferred by Executive Order to the Michigan Department of Community Health.

The Bureau of Medicaid Financial Management is the area within the Michigan Department of Community Health charged with the responsibility to determine payment rates for institutional providers certified to participate in the program. Generally, the Bureau is responsible for setting rates for long-term care facilities. These providers are required to submit annual cost reports that include an itemized list of expenses incurred by each provider. The information on the cost reports is disseminated by the Bureau and used to determine reimbursement rates. In order to qualify for Federal matching funds, the Bureau of Budget and Audit is required to perform periodic on-site audits of these providers. The audits are used to verify the accuracy of the submitted data and to ensure that the expenses listed on the cost report meet the State and Federal requirements to be considered allowable and reimbursable under the program.

Rates must be determined for approximately 432 Michigan long-term care institutions. The cost of providing care to Medicaid recipients who reside in these institutions exceeds 1 billion dollars annually. The Department implemented new provider reimbursement programs in 1978, 1980, 1985, and 1986 and again in 1990. Rates are set prospectively based on the individual provider's most recent actual costs. Providers also receive supplemental reimbursement for the nurse aide training and testing program that is paid as an add-on to the normal prospective reimbursement rate. The nurses aide training and testing program was mandated by the Omnibus Budget Reconciliation Act of 1987. Routine costs used to set normal prospective reimbursement rates and the costs incurred for these special programs are all required to be reported in various forms and schedules included in the annual cost report.

Long-Term Care facilities bill Medicaid for services provided in their facilities. Routine services are billed and paid based on the prospective rate that is calculated based on information submitted on annual cost reports. Ancillary services are also billed and paid separately based on a predetermined fee-for-service reimbursement rate. As the payer of last resort, all third party reimbursement must be pursued and identified on all claims for reimbursement.



B. Community Mental Health Services Program

Currently, there are forty-six community mental health service programs and eighteen prepaid inpatient health plans contracting directly with the Michigan Department of Community Health. Pursuant to Section 244(d) of Michigan's Mental Health Code, the Department is required to conduct audits of the expenditure of state funds by Community Mental Health Services Programs. In excess of 50 percent of the departments funding to Community Mental Health Services Programs and Prepaid Inpatient Health Plans is allocated to Detroit/Wayne County Community Mental Health Services, Macomb County Community Mental Health Services, Monroe County Community Mental Health Services, Oakland County Community Mental Health Services, Washtenaw County Community Mental Health Services and Washtenaw Community Health Organization.

New Managed Specialty Supports and Services Contracts and Managed Mental Health Supports and Services Contracts were established between the Department and the CMHSPs and PIHPs October 1, 1998. These contracts were amended effective October 1, 2003 to comply with federally mandated waiver requirements. The Department is required to conduct audits and reviews of the PIHPs pursuant to Sections 9.4.1 and 9.3 of the contracts. The Department is also required to audit these contracts for compliance in order to satisfy federal monitoring requirements. The purpose of these audits/reviews is to verify compliance with the terms of the contract; state and federal statutory requirements including appropriation boilerplate language; federal waiver requirements; financial reporting; encounter reporting; allowable cost principles; applicable state and federal rules, regulations, and policies; and to evaluate the effectiveness of the agency's claims and procurement systems. The review should also include an assessment of rate setting methodologies and reimbursement practices for any department fee-for-service components of the contract. Additionally, the audit/review may include a determination on whether the program is effective and efficient with adequate internal controls in place.

C. Other Specialized Audits/Reviews and Special Reports

The Department has contracts/agreements with other entities involving the dispersing of funds and receipt of services. Audits and/or reviews are necessary to determine financial/program compliance with the contract/agreement and to determine if the entity is operating effectively and efficiently with adequate internal controls in place. Additionally, special projects such as the creation of audit programs may be required. The entities involved include, but are not limited to, profit and not-for-profit corporations, local district health departments and qualified health plans.

Executive Order 1996-1 merged the Medical Services Administration, Department of Mental Health, Department of Public Health and other entities into a new department entitled Michigan Department of Community Health. Auditing responsibility for all of the Michigan Department of Community Health programs is the responsibility of the Bureau of Budget and Audit, Office of Audit. The complexities involved with the constant and anticipated changes to the long-term care reimbursement program together with the monumental changes taking place as the Department continues to develop managed care as opposed to fee-for-service delivery systems, have increased the Bureau's responsibilities and workload tremendously. With these changes and based on the tremendous cost involved in providing these services, it is imperative that the Department review these costs and programs to ensure the following:

- a. that funds are being spent appropriately and in accordance with established laws, rules, and regulations;
- b. that services are being provided; and
- c. that the programs are functioning efficiently and effectively

Because much of the workload tends to be much greater during certain times of the year, it is the Department's belief that outside contractual services should be utilized.

1.1 **Scope of Work and Deliverables** 1.101 **IN SCOPE**

There are two primary objectives and one secondary objective of this contract.



The first primary objective is to ensure that the Department qualifies for Federal matching funds by providing the Department with the resources necessary to meet the Federal requirements for conducting on-site audits of long-term care facilities located in southeastern Michigan. A representative listing of the facilities covered is outlined in Appendix A. This is a representative listing and is subject to change due to ownership changes, conflict of interest, facility closures, or other circumstances. Facilities may be operated as part of a chain or incur costs and services from a related organization. Reimbursement for home office or other related organization costs are subject to the same reimbursement principles that govern individual facilities. Each facility will be treated as an individual audit. Separate payment will be made for home offices, management companies, related entities, or any other entities subject to audit for which the nursing home can only claim that entity's actual costs. Hours will be budgeted separately for these entities. Facilities operated as part of a chain will generally only be covered by this contract if the home office is located in Southeastern Michigan. If an assignment requires an audit of a nursing home or home office located outside the area specified in this contract, separate reimbursement for travel will be made in accordance with the State of Michigan standardized travel regulations and the Department's established policies and procedures except that: mileage will be reimbursed at the standard mileage rate, and time spent commuting to and from an audit site will not be billable.

It is anticipated that approximately 270 audits in Southeastern Michigan will be conducted over the three year period requiring 24,750 hours of auditing services, with an additional 180 audits requiring 16,500 hours if the two year option is exercised.

The second primary objective of this contract is to conduct financial compliance audits of selected CMHSPs and PIHPs in Southeastern Michigan. The purpose of these audits is to determine compliance with the Medicaid Managed Specialty Supports and Services Contract and The Managed Mental Health Supports and Services Contracts and whether the program is operating effectively and efficiently with adequate internal controls in place. It is anticipated these audits will require 19,200 hours of auditing services over the three year period and an additional 12,800 hours if the two year option is exercised.

The secondary objective of this contact is to provide other specialized audit work and/or special projects as required. Potential assignments could involve department-funded grants and contracts, district health departments, or projects involving managed care and development of audit programs. It is expected this objective will require 10,000 for three years hours of auditing services.

This project is intended to be a State-controlled program designed to supplement and not replace the audit functions currently performed by in-house staff. The audit to be performed by the Contractor are to be assigned by the Michigan Department of Community Health, Bureau of Budget and Audit, Office of Audit, which will be solely responsible for determining and defining the specific requirements for each audit. Any product produced as a result of the contract becomes the sole property of the State of Michigan. No reports, forms, or other documents, produced in whole or in part under this contract, shall be the subject of an application for copyright by, or on behalf of, the Contractor.

Specific

The specific objective of this contract is to perform audits in order to provide the Michigan Department of Community Health with audit assurances that the data used for settlement and rate setting complies with the Michigan State Plan, Medicaid program policies, Federal Regulations, MDCH/CMHSP and MDCH/PIHP Contracts for Community Mental Health Services Programs/Prepaid Inpatient Health Plans and all applicable State and Federal statutes. Additional objectives are to determine compliance with state/federal laws, rules and regulations, determine if program objectives are being met and whether the program is operating effectively and efficiently. The audits must include adequate steps to:

1. Long-Term Care Facilities

- a. Review, analyze and test (audit) the providers' filed cost report and underlying financial records to ascertain that the amounts used in settlement and rate setting process meet program requirements for allowability.
- b. Determine that costs reported on the cost report are properly classified as to cost center and type of cost, including base, support, and plant cost.



- c. Ascertain whether the methods used to accumulate needed statistical information are adequate and the statistical data is recorded accurately.
 - d. Ascertain that cost finding and cost apportionment have been accurately and fairly computed.
 - e. Identify the underlying causes of significant errors or problems that are found and suggest improvements.
 - f. Verify the propriety of claims submitted for reimbursement.
 - g. Verify the propriety of provider's treatment of patient trust funds.
 - h. Follow-up on significant problem areas identified in the current audit and/or prior audits
2. Community Mental Health Services Programs (CMHSPs) and Prepaid Inpatient Health Plans (PIHPs)
- a. Review, analyze and test the submitted Financial Status Reports (FSRs) and underlying financial records for accuracy and allowability.
 - b. Review, analyze and test the submitted reports detailing expenditures to the Internal Service Fund or Reserve Accounts and underlying financial records for accuracy and allowability.
 - c. Review, analyze and test the submitted Special Fund Report and underlying financial records for accuracy and allowability.
 - d. Ascertain whether the methods used to accumulate needed statistical information are adequate and the statistical data is recorded accurately.
 - e. Identify areas in which the CMHSPs and the PIHPs are not in compliance with the terms of the Medicaid Managed Specialty Supports and Services Contract and the Managed Mental Health Supports and Services Contracts.
 - f. Determine if the community mental health service program is operating effectively and efficiently with adequate internal controls in place. Where weaknesses are identified, provide recommendations for corrective action.
 - g. Verify the propriety of provider's treatment of patient trust funds.

1.102 OUT OF SCOPE

RESERVED

1.103 TECHNICAL ENVIRONMENT

Contract audit staff will be required to have laptop computers with a recent version of Windows and Microsoft office including both word and excel. The computers must also have the capability of sending and receiving e-mail messages and data while on-site. A portable printer will also be required for printing audit work papers and the appropriate revisions to the filed cost reports. The Contractor may also be required to install and utilize state mandated auditing software such as teammate to complete their audit working papers and audit reports. If required, the Department will be responsible for any licensure or maintenance fees.

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:



The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The contractor is not, however, constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary to permit the development of alternative approaches to or the application of proprietary analytical techniques.

1. An overall plan must be developed as a basis for executing subsequent steps as the project progresses. Essential to the process of this task is the preparation of a sound approach to attaining the objectives of the project
2. The contractor must satisfactorily demonstrate an understanding of the principles of reimbursement as set forth in the following references.
 - a. Attachment 4.19-D of the State Plan under Title XIX of the Social Security Act
 - b. Michigan Medical Assistance Program Long Term Care Manual and related Medical Assistance Program Bulletins
 - c. Health Insurance Manual – 15 (HIM-15) and applicable federal regulations.
 - d. Commerce Clearing House, Inc., Medicare and Medicaid Guide (CCH)
 - e. Cost Reporting Forms and Instructions (Form 1579) and Supplemental Schedules as necessary
3. The contractor must satisfactorily demonstrate an understanding of Michigan's Mental Health System as set forth in the following references:
 - a. Michigan Mental Health Code
 - b. DCH/CMHSP Managed Specialty Supports and Services Contract
 - c. Applicable federal regulations relating to the federal waiver.
4. For the specified audit process the Contractor will provide:
 - a. Flow chart describing the methodology to be employed
 - b. Detailed description of the audit techniques and criteria to be employed

Audit Requirements – Long Term Care Assignments

1. The contractor will perform audits in accordance with the requirements specified in this contract. However, if a problem is encountered during the audit that is not specifically addressed in this contract, the Contractor is expected to pursue the issue and communicate their findings and conclusions to the day-to-day Administrator.
2. Cost reports and other audit information will be forwarded to the Contractor just as soon as they become available to the day-to-day Administrator. The cost report will be transmitted electronically, either on a 3.5 diskette or as an e-mail attachment. Hard copies of the cost report will be furnished for reconciliation purposes.
3. The scope of the audit and the selection of accounts for detailed testing will be assigned by the day-to-day Administrator. Should the Contractor discover a problem in the course of an audit with an account that had not been selected, the Contractor will inform the day-to-day Administrator of the situation immediately. The scope will be expanded to include this account or area unless the day-to-day Administrator decides that it should not be reviewed.



4. Audit appointments will be made by the Contractor. Appointments will be confirmed by certified letter, with a copy to the day-to-day Administrator. The contractor will attempt to schedule each audit within 15 days of the receipt of each assignment. The contract Administrator is to be notified of the starting date of each audit.
5. The Contractor will utilize the Department's audit program for Long Term Care providers, which is attached to this contract as Appendix B. Long Term Care providers vary in size, complexity, scope of operations, and services they provide. They also vary in terms of the number and type of other entities to which they are affiliated. Because of these variations, the audit programs are intended to be utilized as a guide. They are not to be construed as an absolute limit on the scope or extent of testing to be performed should it become necessary to utilize different procedures in order to fully accomplish the audit objectives.
6. All completed audits must contain adequate testing of the provider's accounting and statistical records to provide reasonable assurances and verification of the following:
 - a. Mathematical accuracy of the cost report.
 - b. Proper classification of costs on the cost report.
 - c. Statistics used in cost finding.
 - d. Proper compliance with the Medicaid allowable cost principles.
7. Audit work papers developed during the audit must be legible and in sufficient detail to support the work performed and what was found. Work papers must indicate a purpose and identify the source of the information or documentation that was received. Conclusions reached must be clearly explained, well documented, and include the specific citation that serves as the authority for the adjustment.
8. Audit findings will be brought to the provider's attention as they are discovered during the course of the audit, and again in total, prior to conducting the exit conference. This will allow the provider time to prepare for the exit conference.
9. The audit work will be reviewed and approved by the day-to-day Administrator or designee before the exit conference is conducted with the provider. If at all possible, the audit work will be reviewed on-site as the audit progresses.
10. The Contractor will schedule and conduct an exit conference with appropriate representatives of the provider upon completion of the fieldwork and applicable audit reviews. The day-to-day Administrator and/or designee may attend the conference. If the provider furnishes additional documentation at the exit conference, an evaluation of the evidence is to be clearly noted and explained on the audit work papers. At the conclusion of the conference, the Contractor will prepare a brief memorandum summarizing the discussion. The memorandum must indicate who was in attendance, the date and location of the meeting, the provider's position on contested findings, and the issues upon which the parties are in agreement. At the conclusion of the exit conference, the provider's representatives should have a clear understanding of the adjustments that are being proposed and the basis for those findings. Copies of all pertinent work papers and cost reporting schedules are to be furnished to the provider at the conference.
11. After the audit has been completed, the Contractor will issue a formal notice (in a format approved by the day-to-day Administrator) to the provider's designated representative(s) of the results of the audit. The notice will be sent by certified mail and be designated as the "Preliminary Summary of Adjustments". The notice will include a summation of the results of the exit conference, a description of the proposed adjustments, the authority of the adjustments, copies of pertinent cost reporting forms incorporating the adjustments, and instructions for requesting an Area Office Conference for those issues that the provider's representatives are not in agreement.



12. Time frames for completing each assignment will be established by the day-to-day Administrator. The contractor will have a maximum of seventy-five (75) days from the date of delivery of each cost report to complete the assignment. An assignment is considered complete upon the Contract Administrator's receipt and acceptance of the audit file and separate audit reporting packages. No extension will be allowed beyond the 75-day maximum unless specifically approved by the Contract Administrator. All requests for extensions must be made in writing and set forth the reasons for the request. Should the Contractor fail to complete an assignment within the established timeframe, the day-to-day Administrator, may at his (her) sole discretion, reduce the Contractor's payment by (15) percent for each 15 day period or portion thereof that exceeds the 75-day limit.
13. The Contractor will complete all assignments and make the appropriate revisions to the filed cost reports electronically using the cost report template developed by the Department. Adjustments and changes to the filed cost report must be completed, validated, and errors corrected prior to conducting the exit conference with the provider. The contractor must have the necessary automation capabilities to complete the assignment in the automated format. The current system utilizes a recent version of Microsoft Windows and Office including both Word and Excel. Auditors in the field must have laptop computer with capabilities to run these applications and to be able to send and receive e-mail messages while on-site. In addition, contract staff may be required to install and become proficient with a standard state mandated auditing software program.
14. The Contractor and professional audit staff assigned to this project will occasionally be required to participate and testify in administrative hearings or court proceedings for providers that disagree with the audit conclusions.

Audit Requirements – Community Mental Health Service Program (CMHSP) and Prepaid Inpatient Health Plans (PIHP)

1. The contractor will perform audits in accordance with the requirements specified in this contract. However, if a problem is encountered during the audit that is not specifically addressed in this contract, the Contractor is expected to pursue the issue and communicate their findings and conclusions to the day-to-day Administrator.
2. All necessary audit information will be forwarded to the Contractor by the day-to-day Administrator prior to the beginning of the audit.
3. Audit appointments will be made by the Contractor. Appointments will be confirmed by certified letter with a copy to the day-to-day Administrator. The Contractor will attempt to schedule each audit within 45 days of the receipt of each assignment. The day-to-day Administrator is to be notified of the starting date of each audit.
4. The Contractor will assist in the development of an audit program for CMHSPs and PIHPs. CMHSPs and PIHPs vary in size, complexity, scope of operations, and services they provide. They also vary in terms of the number of other entities to which they are affiliated. Because of these variations, the audit program will be utilized as a guide and is not to be construed as an absolute limit on the scope or extent of testing to be performed should it become necessary to utilize different procedures in order to fully accomplish the audit objectives.
5. All completed audits must contain adequate testing of the provider's accounting and statistical records to provide reasonable assurances and verification of the following:
 - a. Mathematical accuracy of the cost report or Financial Status Report (FSR).
 - b. Proper classification of costs on the cost report or FSR.
 - c. Proper compliance with the Medicaid Managed Specialty Supports and Services Contract and Managed Mental Health Supports and Services Contracts.



- d. Compliance with all applicable laws, regulations, rules, policies and procedures.
6. All completed audits must contain adequate testing to satisfy audit objectives in terms of whether the programs are being operated efficiently and effectively.
7. Audit work papers developed during the audit must be legible and in sufficient detail to support the work performed and what was found. Work papers must indicate a purpose and identify the source of the information or documentation that was received. Conclusions reached must be clearly explained, well documented, and include the specific citation that serves as the authority for the adjustment.
8. Audit findings will be brought to the PIHP's and CMHSP's attention as they are discovered during the course of the audit, and again in total, prior to conducting the exit conference. This will allow the provider time to prepare for the exit conference.
9. The audit work will be reviewed and approved by the day-to-day Administrator or designee before the exit conference is conducted with the provider. If at all possible, the audit work will be reviewed on-site as the audit progresses.
10. The contractor will schedule and conduct an exit conference with appropriate representatives of the PIHP and CMHSP upon completion of the fieldwork. The day-to-day Administrator and/or designee may attend the conference. If the PIHP and CMHSP furnish additional documentation at the exit conference, an evaluation of this evidence is to be clearly noted and explained on the audit work papers. At the conclusion of the conference, the Contractor will prepare a brief memorandum summarizing the discussion. The memorandum must indicate who was in attendance, the date and location of the meeting, the provider's position on contested findings, and the issues upon which the parties are in agreement. At the conclusion of the exit conference, the PIHP's and CMHSP's representatives should have a clear understanding of the adjustments that are being proposed and the basis for those findings. Copies of all pertinent work papers are to be furnished to the PIHP and CMHSP at the conference.
11. Subsequent to the exit conference, the Contractor shall generate a draft report containing at a minimum background information, purpose and scope of audit, audit objectives, and financial/management findings, conclusions and recommendations. Each audit finding must also include a condition statement, criteria, cause and consequence.
12. A meeting will be held to discuss the draft report if requested by the PIHP and CMHSP.
13. Time frames for completing each assignment will be established by the day-to-day Administrator with input from the Contractor.
14. The Contractor and professional audit staff assigned to this project will occasionally be required to participate and testify in administrative hearings or court proceedings for providers that disagree with the audit conclusions.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The contractor must identify senior staff members who will continually be on-site and in-charge of the long-term care and community mental health services program assignments. It is not acceptable to have new and inexperienced staff in-charge of these assignments. Community Mental Health service program assignments require staff with financial, compliance and performance auditing experience who have proven ability in communicating audit results in a written report.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The Office of Audit within the Michigan Department of Community Health will be responsible for the day-to-day performance of this contract.



Mr. James Hennessey is the Director of the Office of Audit and also the internal auditor for the Department. Mr. Larry St. Clair, a Manager within the Central Regional Office, will serve as the day-to-day administrator. In addition to his general oversight responsibilities, Mr. St. Clair will provide direct oversight and direction to the contractor for all audits involving long-term care providers. Mr. John Duvendeck, also a Manager in Central Regional Office, will provide direct oversight and direction to the contractor for all audits involving CMHSPs and PIHPs.

1.203 OTHER ROLES AND RESPONSIBILITIES

There may be instances where contract staff may be required to assist staff from the other regional offices. In those instances, direct oversight will be under the direction of supervisory staff from those offices. A copy of the Office's organization chart is attached as Exhibit

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1. Project Control

- a. The Contractor will carry out this project under the direction and control of the Department of Community Health (DCH), Office of Audit. Direction and control relates to the overall process and acceptable end products and does not necessarily imply that DCH personnel will be on-site while the audit is in progress. DCH personnel will not have direct supervision over the Contractor's personnel. Any concern's suggestions, or instructions concerning a particular audit will be communicated directly to the contractor's project manager. The day-to-day Administrator and/or designated representatives will be available for initial indoctrination and guidance; however the Contractor will assume primary responsibility for conducting the audit.
- b. Budget hours will be established by the day-to-day Administrator for each assignment with input from the Contractor. Payment for each assignment will be limited to actual hours worked on-site and does not include vacation or sick leave, travel time, staff meetings, employee training sessions, or other time spent at locations other than the assigned work location. Any deviation from the established budget hours will require a written request from the Contractor citing the reasons for the deviation and approval from the day-to-day Administrator.
- c. Although there will be continuous liaison with the Contractor team, the day-to-day Administrator will meet quarterly as a minimum, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
- d. The Contractor will submit bi-weekly time summaries for all audit staff that is currently working on an audit assignment. The time reports will need to detail audit time by provider name and year-end.
- e. The contractor will submit written monthly summaries of progress which outline the work accomplished during the reporting period; problems, real or anticipated, which should be brought to the attention of the day-to-day Administrator; and notification of any significant deviation from the previously agreed-upon work plans.
- f. Within five (5) working days of the award of the Contract, the Contractor will submit to the DCH day-to-day Administrator for final approval, a work plan. The final implementation plan must be in agreement with Section 1.104 as proposed by the State for Contract, and must include the following:
 - (1) The Contractor's project organizational structure.
 - (2) The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted personnel. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.



- (3) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

1.302 REPORTS

Packages – Long Term Care Assignments

- a. For each audit, the Contractor will be expected to submit their findings in a neatly organized bound package, in the order and format shown in Appendix C. At a minimum, the package must include the following.
 - (1) Engagement letter
 - (2) Filed Cost Report
 - (3) Revised Cost Report (including all Supplemental Cost Reporting forms). A diskette saved in a text file.
 - (4) Preliminary Summary of Audit Adjustment Notice
 - (5) Average Borrowings Schedule
 - (6) Exit Conference Memorandum of Understanding
 - (7) Audit Program
 - (8) Internal Control Questionnaire
 - (9) Memo for each section of the audit program summarizing the work performed, findings, and areas of major concern.
 - (10) Audit work papers (electronic preparation preferred)
 - (11) Form signed by the provider authorizing release of the information (when required)
 - b. For each audit, the Contractor will prepare a separate package to be used in rate setting of pertinent cost reporting forms incorporating the results of the audit. A checklist of the forms to be included in this package is attached to this contract as Appendix D.
 - c. For each audit, the Contractor will prepare a separate package to be used by Office of Audit Management. The package will include the following:
 - (1) Preliminary Summary of Audit Adjustment Notice
 - (2) Audit Time Control Evaluation
 - (3) Cost Savings Form
 - d. Audit acceptance letter for each audit indicating that the Contractor has completed the required procedures in order to establish that the cost of routine services were determined in accordance with the allowable cost principles of reimbursement.
 - e. A final statement indicating that the terms of the contract have been fulfilled.
3. Packages – Community Mental Health Services Program (CMHSP) Assignments
- a. For each CMHSP/contract agency, the Contractor will be expected to submit their findings in a neatly bound package. At a minimum, the package must include the following:



- (1) Engagement Letter
 - (2) Audit Program
 - (3) Internal Control Questionnaire
 - (4) Audit work papers (electronic preparation preferred)
 - (5) Memo for each section of the audit program summarizing the work performed, findings and areas of concern.
 - (6) Narrative of management findings and recommendations.
 - (7) Listing of audit adjustments and authority
 - (8) Exit Conference Memorandum of Understanding
 - (9) Form signed by the program/agency authorizing release of information.
 - (10) Preliminary Draft of the Audit Report using DCH’s established report format that includes for each finding the condition statement, criteria, consequence, cause, conclusion and recommendation(s).
- b. Audit Acceptance Letter for each audit indicating that the Contractor has completed the required procedures.

4. Packages – Other Entities

For entities other than long-term care providers and community mental health services programs, the Contractor will be expected to submit their findings in a neatly organized bound package. The contents of the package will be dependent on the type of assignment. The contractor may also be required to develop or assist in the development of the audit objectives and the audit program.

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.

- 1. Ability to maintain a level of knowledgeable staff adequate to complete audits within the assigned time frames in an efficient manner.
- 2. Ability of audit staff to develop legible work papers in sufficient detail to support the work performed and conclusions reached and contain the authority (special citation), used to determine the conclusions.



3. Ability to maintain adequate supervisory staff in order to verify appropriate audit staffing requirements are met and to ensure appropriate communication with DCH staff as the audits progress.
4. Ability of the contract staff to communicate audit issues to the day-to-day Administrator so they can be resolved in a timely and professional manner.
5. Ability to schedule audit appointments within the timeframes established for the Long Term Care and Community Mental Health audit assignments.
6. Ability to prepare audit work papers that support adequate testing of the provider's accounting records.
7. Ability to make the appropriate revisions to the filed cost report electronically using the cost report template developed by the Department.
8. Ability to provide professional audit staff that will occasionally be required to participate and testify in administrative hearings or court proceedings.
9. Ability to complete all required audit procedures within 75 days from the date of delivery of each Long Term Care cost report.
10. Ability to provide additional trained audit staff for other specialized audit work and/or special projects as required.
11. Ability to schedule and conduct an exit conference with the appropriate representatives and complete all related correspondence required for the Long Term Care or Community Mental Health assignment.
12. Ability to provide a continuing education program for audit staff to stay current on all applicable laws and regulations.
13. Ability to submit their audit findings in a neatly organized bound package in the required format for each audit type.
14. Ability to adapt the Departments audit program for Long Term Care Providers should it become necessary to utilize different procedures to fully accomplish the audit objectives.
15. Ability to continue the development of an audit program for the CMHSPs and PIHPs audits.
16. Ability to determine weaknesses in the Community Mental Health Services program internal controls and where weaknesses are identified, the ability to provide recommendations for corrective action.

1.502 RESERVED**1.6 Compensation and Payment**

Amounts bid on this contract must reflect a single all-inclusive hourly rate with no inflationary increases for subsequent years. If an assignment requires an audit of a nursing home or home office located outside the area specified in this contract, separate reimbursement for travel will be made in accordance with the State of Michigan's standardized travel regulations and the Department's established policies and procedures, except that: mileage will be reimbursed at the standard mileage rate, and time spent commuting to and from an audit site will not be billable. Reimbursement for travel expenses outside the Southeast Michigan area will not be subject to competitive bid. For this purpose, an additional \$25,000 over and above the amount of the award will be provided to cover authorized travel expenses. Reimbursement for mileage will be computed based on the shorter of the distance to the work site from the Contractor's office or the employees' home.

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 DCH Auditing 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.

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 Michigan Department of Community Health, hereinafter known as Michigan Department of Community Health. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process.

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: Douglas Collier
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) (335-4804)
collierd1@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 two (3) years will commence with the issuance of a Contract. This will be approximately 06/01/2005 through 5/31/2008.

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 120 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 State to an extension. If the State 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 (CWHSSA) 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.

2.13 PURCHASE ORDERS

Orders or delivery of commodities and/or services may be issued directly by the State Department 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

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

2.104 IT STANDARDS

1. EXISTING TECHNOLOGY STANDARDS. The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://michigan.gov/dit>.
2. PM METHODOLOGY STANDARDS. The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. This policy is referenced in the document titled "Project Management Methodology" – DMB Administrative Guide Procedure 1380.02 issued June 2000. Vendors may obtain a copy of this procedure, as well as the State of Michigan Project Management Methodology, from the Department of Information Technology's website at <http://www.michigan.gov/projectmanagement>.

The contractor shall use the State's PPM to manage State of Michigan Information Technology (IT) based projects. The Requesting agency will provide the applicable documentation and internal agency processes for the methodology. If the vendor requires training on the methodology, those costs shall be the responsibility of the vendor, unless otherwise stated.

3. ADHERENCE TO PORTAL TECHNOLOGY TOOLS. The State of Michigan, Department of Information Technology, has adopted the following tools as its Portal Technology development efforts:
 - Vignette Content Management and personalization Tool
 - Inktomi Search Engine
 - E-Pay Payment Processing Module
 - Websphere Commerce Suite for e-Store applications



Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.

Under special circumstances vendors that are compelled to use alternate tools must submit an exception request to the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team, for evaluation and approval of each alternate tool prior to proposal evaluation by the State.

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

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will be mutually agreed upon after agreement has been reached with respect to the terms of the RFP and both parties have signed the agreement. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month. Payments may be reduced by 15% for any assignment that is overdue and the State has not granted an extension.

2.203 POSSIBLE PROGRESS PAYMENTS

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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.

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 notwithstanding 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 \$500,000 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

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 90 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.



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

Ownership of Work Product by State.

All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

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 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:

Jim Hennessey

Michigan Department of Community Health
400 S. Pine, Capitol Commons, 5th Floor
Lansing, MI 48933

(517) 335-5323 email: hennesseyj@michigan.gov



2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with the Office of Audit 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.

- (a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and during business hours, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives, so long as no security, labor relations policies and propriety information policies are violated.
- (b) Examination of Records. No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) Audit Resolution. If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report.



The Contractor and the State shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

1. Errors. If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
2. In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten (10%), then the Contractor shall pay all of the reasonable costs of the audit.

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 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

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 INSUREDS 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 INSUREDS 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 one million dollars (\$1,000,000.00), 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.

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 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 Personnel until such time as the Key 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 Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key 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 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 Personnel's employment.

2.507 SOFTWARE WARRANTIES

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain in any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.



(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.508 EQUIPMENT 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

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 Contractor's 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 State.

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 EXTENSIONS**

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.



APPENDIX A

CONTRACTOR'S TECHNICAL PROPOSAL (EXCERPTS)

State of Michigan

C.1 Detailed Work Plan

SCOPE

The Department issued an invitation to bid for a three year contract to begin January 7, 2004 and end December 2007/2009 to provide the following services:

Long-Term Care Facilities

On-site compliance audits of Medicaid cost reports and the supplemental schedules of wage pass-through and nurse aide training and testing for approximately 270 long-term care facilities (i.e., approximately 90 per year), located principally in southeastern Michigan.

The overall objective in auditing each cost report and supplemental schedules is to ensure the Department qualifies to receive Federal matching funds. This objective is accomplished by providing the Department with the resources necessary to meet the Federal requirements for conducting on-site audits of long-term care facilities in southeastern Michigan.

The outcome of the on-site audits will assist the Department by providing assurance that the data used for settlement and rate setting will allow for proper setting of payment rates for institutional providers complying with the Michigan State Plan, Medicaid program policies and Federal Regulations.

Additional objectives are to determine compliance with state/federal laws, rules and regulations, determine if program objectives are being met and whether the program is operating effectively and efficiently. The audits are to be performed in accordance with the Department of Audit and Revenue Enhancement's scoped audit program. The audits will emphasize the allowability, classification, computation and reasonableness of reimbursable costs supported by the underlying detailed financial records of a long-term care facility.

Community Mental Health Service Programs (19,200 HOURS)

Financial / Program compliance audits of selected Community Mental Health Services Programs (CMHSPs) in southeastern Michigan. The purpose of these audits is to determine compliance with the Medicaid Managed Specialty Supports and Services Contract and The Managed Mental Health Supports and Services Contracts and whether the program is operating effectively and efficiently with adequate internal controls in place.

Specifically, services will be provided to assist the Department in the following:



State of Michigan

C.1 Detailed Work Plan

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SCOPE - Continued

Community Mental Health Service Programs (19,200 HOURS) - Continued

Assistance with the Evaluation of the Appropriate Audit Scope

Assistance with the evaluation of the appropriate audit scope to determine materiality and the most efficient and effective way to audit the programs. For this purpose we will rely upon the information provided in the ITB. Specifically, that greater than 50% of the Department's funding is paid to the following agencies:

- Detroit / Wayne County Community Mental Health Services
- Macomb County Community Mental Health Services
- Monroe County Community Mental Health Services
- Oakland County Community Mental Health Service
- Washtenaw County Community Mental Health Services

Assistance with the Development of a Work Program

We will assist with the development of a work program to achieve a sound audit approach and ensure compliance with the new Managed Specialty Supports and Services Contract. The program created would include performance steps to test the following:

- Funds are being spent appropriately and in accordance with established laws, rules and regulations
- Services are being provided
- Contract compliance
- Ensure state appropriation boilerplate requirement compliance
- Financial compliance
- Review of the claims and contracting system
- Review of rate setting methodologies
- Review of reimbursement practices for any "fee for service" components
- Whether the program has adequate internal controls in place, with comments on the program's effectiveness and efficiency.



State of Michigan

C.1 Detailed Work Plan

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SCOPE - Continued

Other Specialized Audits/Reviews and Special Projects (10,000 HOURS)

Specialized audit work and/or special projects will be performed as required by the Department. Potential assignments may include:

- Department-funded grants and contracts (Each contract disbursing of funds and receipt of services)
- Projects involving managed care and development of audit/review programs
- Compliance financial/program audits (and/or reviews) to determine financial/program compliance as outlined in the contracts and agreements the Department has with other entities
- Compliance audits and/or reviews of profit and not-for-profit corporations, local district health departments and qualified health plans

The audit/reviews will determine if the entity has adequate internal controls in place, with comments on the program's/entities' effectiveness and efficiency.

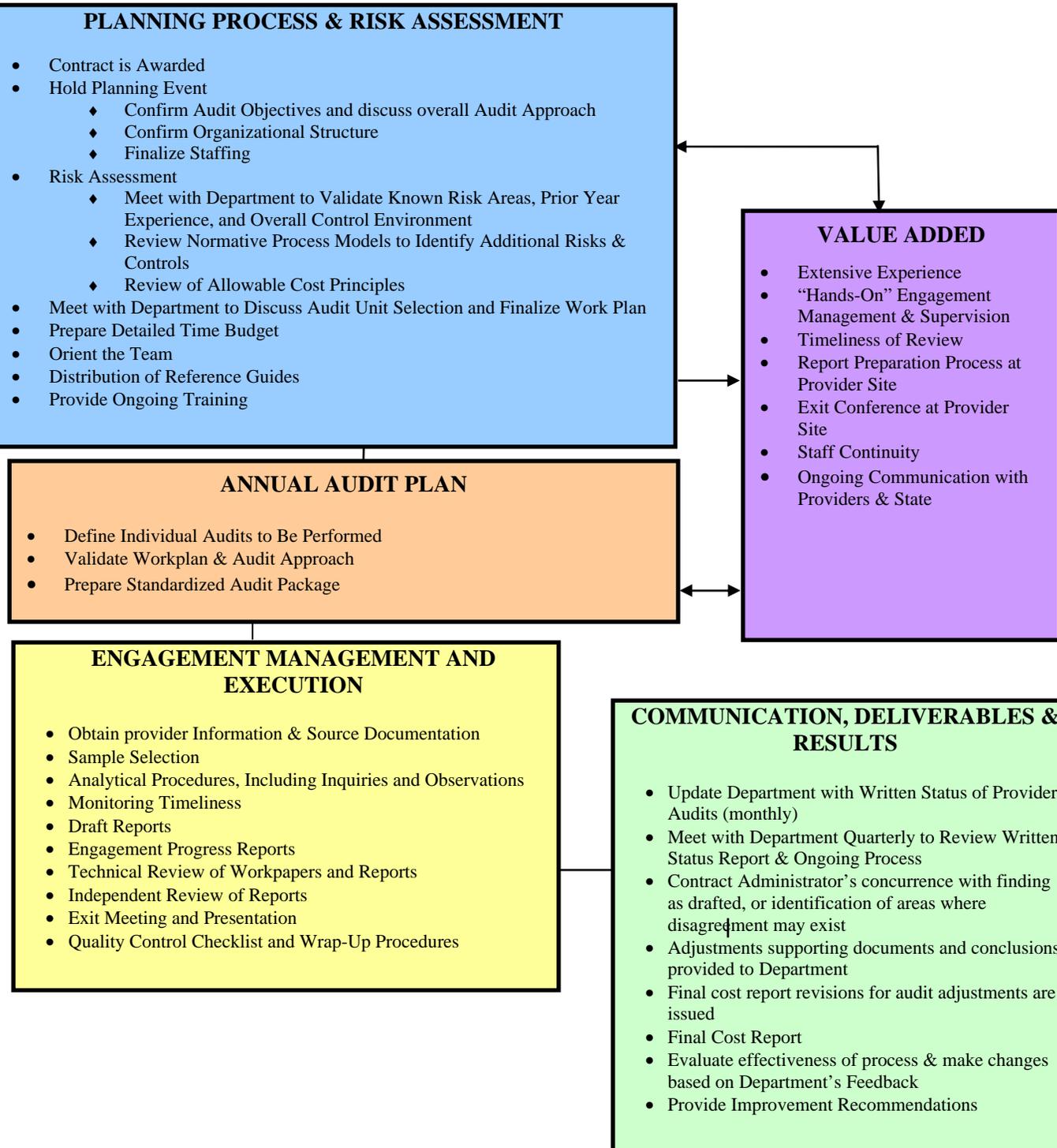


State of Michigan

C.1 Detailed Work Plan

Page 4

WORK PLAN (Engagement Approach)





State of Michigan

C.1 Detailed Work Plan

Page 5

WORK PLAN (Engagement Approach)

WOLINSKI & COMPANY, C.P.A., P.C. is uniquely qualified to provide outstanding service in delivering the highest quality auditing services. In the sections that follow, which describe our technical workplan, our prior experience, our project staffing, and our broad capabilities, we trust that you will agree that WOLINSKI & COMPANY, C.P.A., P.C. is the logical choice. As you review our proposal, you should take special note of the following:

- **WOLINSKI & COMPANY, C.P.A., P.C. has demonstrated the ability to provide timely, quality audit services for long-term care and mental health institutions. Working with Department representative, we developed an efficient, effective process for achieving your goals in contracting for audit services. Clearly, we can deliver**
-
- **We have a process that has worked for long-term care compliance audits and we are confident that a similar approach, based on the same principles, can be readily adapted to the audits of the Community Mental Health Service Programs.**

Audit Methodology

WOLINSKI & COMPANY, C.P.A., P.C. will use a five-step audit methodology. Our five-step methodology allows our team to provide the Department with the following benefits:

- **On-time completion of all work and projects**
- **Development of forms, protocols and procedures for efficient and effective work performance, and cooperation with the Department staff**
- **Regular status meetings and written communication with Contract Administrator to discuss problems and resolve issues.**

Planning Process

The five-step audit process begins with the “Planning Event” that is part of the Planning Process. The purpose of the “Planning Event” is to meet with Department management and confirm the engagement expectations and develop a mutual understanding between the Department and the engagement team. Our planning will be completed both at the “macro” level—for the engagement as a whole, and at the “micro” level—for each individual provider/program audit. The same concept is applicable for all of the steps below. That is, each step will be completed as to the entire engagement and equally to each individual audit. It is this flexibility in our approach that makes it so valuable.

Deliverables from the Planning Process

- **Work plan and audit approach**
- **Organizational structure**
- **Staffing with names and titles of dedicated personnel**
- **Detailed budget (including activities, task and resources assigned)**
- **Standardized required forms to be utilized (e.g., engagement letter, provider release form, etc.)**



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C.1 Detailed Work Plan

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WORK PLAN (Engagement Approach) – Continued

Audit Methodology –Continued

Risk Assessment

The risk assessment objective is a process-based approach to comprehensively assess financial and control risk. A risk focus provides a broader view of relevant risks to better align the audit plan and execution with the areas with present the most risk to the Department. The Objective is to provide the maximum gap closure and early warning detection of potential exposures.

Deliverables from the Risk Assessment Step

- Detailed Risk Assessment Model
- Risk and control matrix completed
- Significant risks identified and audit strategy developed to address those risks
- Preliminary audit plan developed

Annual Audit Plan

The purpose of developing an annual audit plan is to define, in conjunction with Department representatives, the audits to be performed. The decision to perform specific audits, how frequently the audits will be performed and the scope of the audits are driven by the results of the risk assessment process and the Department's knowledge and prior experience.

In addition, each individual audit will be conducted according to a plan. In the case of the long-term care facilities, we have developed very efficient and effective plans. For the Mental Health Services Programs, we will use a process similar to that of the long-term care audits.

The ITB indicates that budget hours will be established by the Contract Administrator for each assignment, with input from the Contractor. Wolinski & Company, C.P.A., P.C. will work effectively to obtain agreement with the Department regarding budget for the scope of work. Our track record concerning agreement on budgeted hours provides the Department with confidence that you will have an excellent working relationship with Wolinski & Company, C.P.A., P.C. Our response to this ITB and any contract that results from it are conditioned upon the Department and Wolinski & Company, C.P.A., P.C. agreeing on budgeted hours, based on the assumption that both parties are estimating in good faith, and based on the assumption that budgets are reasonable compared with our prior experience with similar providers and assuming further that we are using appropriately trained and supervised staff. It is our understanding that the hours budgeted will include all hours we incur to perform the engagement, including planning and supervision, regardless of where our time is spent. Of course, we plan to spend the majority of our time at the provider site.



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C.1 Detailed Work Plan

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WORK PLAN (Engagement Approach) – Continued

Audit Methodology –Continued

Deliverables from the Audit Plan Step

- **Multi-year detailed audit schedule approved by the Department**
- **Preliminary audit approach reviewed with the Department and/or its designee**

Engagement Management & Execution

The execution of the audit plan is comprised of five subactivities designed to guide the execution of individual audit projects designed to guide the execution of individual audit projects defined in the Annual Audit Plan. The subactivities include:

- Planning the Audit Project: Establish the objectives, scope and timing of the audit project;
- Orienting the Team: A team orientation is conducted to provide the audit team with a clear understanding of the objectives, scope, and timing of the audit project, along with a sufficient amount of information to enable each team member to begin fieldwork in their areas;
- Further Understanding and Evaluating Significant Processes and Related Controls: This activity builds on our initial understanding of the individual's unit's significant processes, risks and controls to gain a further understanding and evaluation of the effectiveness of controls to gain a further understanding and evaluation of the effectiveness of controls in assuring that the significant processes achieve their objectives (e.g., operating, compliance).
- Executing Test of Controls: Execute tests of controls to determine if the controls were operating effectively. Exceptions are communicated to the Department and improvement recommendations are provided.
- Concluding the Audit / Reporting: A conclusion related to the audit project is reached based upon the results of the testing performed, review of the working papers, and supporting documentation to ensure that sufficient work has been performed to satisfy the audit objectives and the conclusions are adequately supported.



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C.1 Detailed Work Plan

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WORK PLAN (Engagement Approach) – Continued

Audit Methodology –Continued

Deliverables from the Execute Audit Plan Step

- Audit administration materials including:
 - ◆ Schedule of audit appointments
 - ◆ Time budgets
 - ◆ Reference set of forms and other communications
 - ◆ Listing of the most common audit adjustments
- Workpapers and analyses; confirmations; independent calculations and comparisons
- List of procedures and findings
- Status reports to the Contract Administrator and/or its designee
- Location audit findings

Communication, Deliverables & Results

This activity provides guidance on communicating the results of the audit work to the Department. Formal approval will be obtained for the risk assessment and the annual audit plan, as well as for each audit project. Wolinski & Company, C.P.A., P.C. will communicate in writing the Department representatives regarding the results of the procedures performed under the Department's direction and review. We will also communicate the value we have provided to the Department.

Deliverables

- Contract Administrator's concurrence with findings as drafted, or identification of areas where disagreement may exist.
- Adjustments, audit conclusions, and supporting workpapers provided to Department
- Final cost report with revisions for audit adjustments
- Final Financial Status Report
- Evaluate effectiveness of process & make changes based upon Department's feedback
- Provide improvement recommendations



APPENDIX B
CONTRACTOR'S PRICING

\$45.00 Per Hour

1% prompt pay discount net 15 Day from receipt of invoice.
This discount is for the 1st year of the contract only.