

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

October 26, 2005

**NOTICE
 TO
 CONTRACT NO. 071B6200046
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Abraham & Gaffney, P.C. 108 North Spring Street St. Johns, MI 48879	TELEPHONE (989) 224-6836 Michael T. Gaffney
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7396 Andy Ghosh, CPPB
Contract Compliance Inspector: Mike Wurmlinger Fiscal & Administrative Compliance Monitoring Services - DLEG	
CONTRACT PERIOD: From: December 1, 2005 To: November 30, 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>	

The terms and conditions of this Contract are those of [ITB #071I5200360](#), this Contract Agreement and the vendor's quote dated 08/23/2005. 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: **\$448,750.00**

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THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the **ITB No. 071I5200360**. A Purchase Order Form will be issued only as the requirements of the Department of Labor and Economic Growth are submitted to Acquisition Services. Orders for delivery may be issued directly by the **Department of Labor and Economic Growth** through the issuance of a Purchase Order Form. All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR: <p style="text-align: center;">Abraham & Gaffney, 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: <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Andy Ghosh, CPPB, Buyer Specialist</p> <hr/> <p style="text-align: center;">Name</p> <hr/> <p style="text-align: center;">Services Division, Acquisition Services</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services**

Contract No. 071B6200046

Fiscal & Administrative Compliance Monitoring Services for Department of Labor & Economic Growth

Buyer Name: Andy Ghosh
Telephone Number: 517-373-7396
E-Mail Address: ghosha@michigan.gov



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Appendix A – Technical Proposal (Excerpts Only)



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The Contractor will conduct on-site compliance monitoring reviews of the fiscal and administrative requirements for the federal employment and training funds administered by the Department of Labor and Economic Growth (DLEG), Bureau of Workforce Programs (BWP). The on-site reviews will be conducted mainly in the Detroit Metropolitan Area, with the possibility of other locations within the State of Michigan. Entities reviewed will include direct grant recipients of DLEG/BWP, as well as, the service providers and contractors of those direct grant recipients.

1.002 BACKGROUND - RESERVED

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The Contractor will conduct on-site reviews in the Detroit Metropolitan area. The reviews will require analysis, investigation, interpretation, summation, and presentation of complex financial and business-related issues relative to the fiscal and accounting operations. The contractor will also assess compliance with laws, regulations, rules and policies governing federal and state grants. The contractor will issue written reports quarterly to the DLEG Internal Audit & Monitoring Division Director. The reports will indicate areas that require immediate improvement and make recommendations to effect changes to fiscal, accounting, and administrative policies and procedures. In addition to the written reports, representatives of the Contractor will need to periodically meet with DLEG staff (and possibly other governmental officials) to provide updates and communicate matters that require immediate attention. The topics for the reviews will include, but are not limited to, the following:

Budgeting System: Render an opinion on whether the entity under review has effective procedures for formulating and executing financial plans and for making necessary adjustments in response to variances between planned and actual results. In forming this opinion consider the following: [29 CFR 97.20(b)(4), 97.22 and 97.30(c)]

- The budget or plan prepared by the entity for the use of funds by month or quarter, and by function, throughout the term of the grant/subgrant;
- The entity's budget identifies costs for One-Stop operations;
- The method used by the entity to monitor planned versus actual costs;
- The types of actions taken when large variances between planned and actual costs occur or are expected to occur;
- Whether or not budget line items are for charging or accumulating costs in the accounting system; and
- Whether or not the entity has an obligational control register or some other means for tracking planned and actual receipt of award funds from the granting agency and commitments made against such funds, and the remaining unliquidated balances.

Memorandum of Understanding: The WIA regulations at 20 CFR 662.300(b) require the partners in a One-Stop system to maintain a written agreement (Memorandum of Understanding (MOU)), which includes a description of the shared costs of the One-Stop center. Conduct a review of the arrangements made by the One-Stop operator to ensure that all partners are bearing their fair share and the following areas are addressed:

- A written agreement (MOU) signed by the partners exists as to how common costs will be shared in the operation of the center.
- The agreement covers all shared costs such as:
 - Space
 - Administrative staff
 - Utilities
 - Program staff
 - Office supplies
 - Postage



- Office equipment
- Other.
- The MOU contains the provisions required by WIA Section 121(c)(2).

Note: Shared costs may be addressed in resource sharing documents other than the MOU.

- The method used to determine that each partner's "fair share" contribution is equitable. Note: The reviewer may consult the Federal Register dated May 31, 2001 (Resource Sharing for Workforce Investment Act One-Stop Centers) or the One Stop Comprehensive Financial Management Technical Assistance Guide when making this determination.
- The bases used for allocating different types of costs are reasonable and reviewed periodically to ensure their accuracy and applicability.

Test charges made for shared costs and offer an opinion as to whether or not the costs are being distributed in accordance with the partners' agreement. Describe and explain the testing methods used by the reviewer to determine equability of shared costs.

Cost Allocation: Obtain a copy of the entity's cost allocation plan or indirect cost proposal. A review of this document should be conducted to ensure that the bases used are in compliance with OMB Circulars A-87 or A-122, and that these costs are distributed on an equitable basis. Render an opinion addressing the following:

- The number of fund sources the entity receives;
- The method(s) used to allocate staff salaries and benefits;
- The method(s) used to allocate operating costs;
- Whether or not the bases for allocation are allowable and reasonable; and
- Whether or not bases are consistent for similar types of costs.

Cost Classification/Allowable Costs: Determine whether costs charged to the Federal programs are allowable. Guidance on the allowability of costs can be found in the applicable OMB circular on cost principles (OMB Circulars A-21, A-87, and A-122) and 48 CFR Part 31.

In forming an opinion on the adequacy of the entity's compliance with allowable cost guidelines and classification consider the following:

- If real property was purchased or constructed, did it meet the established requirements?
- Did capital improvements receive prior approval by the grantor?
- Does the entity have a process for obtaining written approval from a higher tier agency for those cost principle items requiring such approval?
- Is the subrecipient's chart of accounts compatible with the cost categories by which it reports to the grant recipient?
- Are the costs described at 20 CFR 667.220(a) and (b) incurred by the grant recipient and the One Stop operator appropriately charged to administration?
- Are the costs associated with subcontracts and subgrants classified appropriately [20 CFR 667.220(c)]?
- Are the costs charged to the program allowable; necessary, reasonable and allocable?
- Is the entity complying with the direction provided by the grantor agency on the prohibition of costs?

Financial Management System: The Common Rule (OMB Circular A-102) and OMB Circular A-110 require recipients and subrecipients to maintain fiscal accountability of grant funds. Render an opinion as to the adequacy of the entity's financial management system and verify that the system includes but is not limited to:

- Written fiscal procedures,
- A system of internal controls, and
- Documentation of receipts and disbursements.

The entity must have sufficient source documentation to demonstrate that the Federal funds are expended for allowable purposes.



Obtain a copy of the entity's written fiscal procedures for review and determine if there is sufficient direction to staff to ensure that the Federal funds are appropriately managed and controlled. In forming that opinion, consider the following:

- Information regarding how the chart of accounts is organized;
- Instruction to staff on recording transactions;
- A process for handling staff payroll—how reported time vs. actual time is verified and timecard signature requirements;
- Participant timecards (if applicable);
- How payroll taxes and other deductions are treated;
- Travel rules for the organization and how travel advances (if applicable) are treated;
- How subsidiary records and official records are reconciled and who is authorized to perform the activity;
- Instructions on the separation of duties for recording and approving transactions; and
- How actual expenditures including all cash outlays (including tuition payments) plus all accruals for goods and services received but not yet paid for are converted to accrual or modified accrual expenditures for reporting purposes (if applicable).

If there is significant activity in the petty cash account, review the process and determine the following:

- How are funds disbursed, and what approval is required.
- How petty cash is secured and how often random surprise audits are conducted.

Form an opinion on the sufficiency of the audit trail for transactions, taking into consideration the following:

- All transactions are traceable to canceled checks or electric fund transfers.
- There were no discrepancies between the check amount or date and the journal entry.
- All transactions appear to be necessary, reasonable, allocable, and allowable to the WIA program.
- Adequate documentation (original invoices vs. statements) supports all transactions.
- Check numbers and dates of payment were entered on all original source documents, invoices or statements to indicate that payment was made.
- All checks contained proper and prior authorization by an authorized signatory of the agency.
- The cost classification and/or general ledger number (identifying program and cost category) was entered on all invoices (or equivalent back up).
- All refunds were recovered, where applicable, for ITA payments to vendors.
- The process by which the entity is notified that a refund is due from the vendor; and how that information is conveyed to the fiscal unit.
- The numerical sequence of checks in the disbursement journal is complete and there are no check numbers missing including voided checks.
- No checks are made out to cash.
- Postings to the disbursement journal and general ledger are reasonably up to date (within one week of date of disbursement and within one month to posting into the general ledger).
- For manually maintained records, the books of original entry are in ink (and corrected by lining out the amount and inserting the correct amount).
- For automated or computer generated media, edit checks can be performed only by authorized individuals.

Examine the bank statements and bank reconciliations for the review period to determine if proper reconciliations were done. Copies should be made of the review period documents as needed. Form an opinion on the timeliness and accuracy of the reconciliation process taking into consideration the following:

- The frequency of bank reconciliations (within two weeks of receipt of bank statement) to the general ledger;
- The reconciliation worksheets are signed and dated;
- The timeframe when outstanding payroll and vendor checks are written off;
- That canceled checks (including voided checks) are itemized and are actually compared to the disbursement journal for date, amount, and payee (If canceled checks are not provided by the bank, the canceled check register is compared to the disbursement journal); and
- That there is a separation of duties between the different individuals who record disbursements and receipts, signs checks, and reconciles the disbursement and receipts journals.



For an accounting system maintained on a cash basis, review worksheets for the last reporting period that show the adjustments made to obtain accrued figures in the general ledger and determine the following:

- Accruals are supported by the general ledger,
- The worksheet(s) agree with the report for that period,
- Accrued leave obligations are included in the computations,
- Proper adjustments were made.

After having conducted all of the above tests, form a conclusion regarding the overall fiscal system and processes of the entity. The system should sufficiently address the following:

- Adequate audit trails for all disbursements;
- Disbursements documented properly to support costs as allowable, allocable, reasonable, and necessary;
- Except for petty cash, all disbursements should be in a form other than cash, e.g. checks, electronic fund transfers, etc.;
- All disbursements are recorded accurately; and
- Internal controls were established and followed.

Cash Management: Entities who are on an advance payment system are required to establish methods and procedures for minimizing the time between the receipt of Federal funds and their disbursement.

Identify the number of bank accounts (zero balance, clearing, payroll, other) with deposits of Federal funds. For all Federal funds received and disbursed by the entity, determine the following:

- How the amount of cash requested is determined appropriate and who is authorized to make the request.
- How advances to subcontractors and subrecipients are determined and how requests for reimbursements are initiated.
- The timing of the request for funds.
- Time lapse from date of expenditure to date of request for reimbursement.
- If advances are based on immediate need, when are the requests for funds initiated:
 - When a vendor invoice is processed,
 - When the entity writes checks, or
 - When the entity's checks clear the bank.
- Requests for funds are made for the following only when payment is due:
 - Federal Insurance Contributions Act (FICA) and Federal income tax,
 - Health insurance,
 - State payroll tax,
 - Life insurance,
 - Union dues, and
 - Indirect payroll costs.
- Time lapse from date of request to receipt of funds.
- Number of cash requests each month.
- Instances when there is a shortage of available funds, or the presence of substantial funds in the account(s) that are not immediately needed.
- The method used to account for cash (e.g. cash control ledger, other means).
- How management ensures that cash balances are not excessive.

As a result of this review, an opinion should be rendered relative to the adequacy of the cash management procedures. This opinion should include statements relative to:

- The recipient's system for monitoring receipts, disbursements, and balances of funds;
- The recipient's compliance with the requirement to avoid excess cash on hand; and
- The recipient's procedures for:
 - Obtaining timely payment of amounts it is due;
 - Making timely but not premature payment of amounts it owes;
 - Ensuring receipt of available purchase discounts; and
 - Avoiding late payment penalties.



Program Income: Identify program income as defined by the appropriate Federal regulation and determine if it has been accounted for and expended in accordance with those requirements.

In rendering an opinion on this process consider the following:

- Program income as defined by the regulations is reported in the entity's books of account and on reports to its awarding agency.
- Program income is expended for allowable purposes under the grant under which it was earned.
- All income generated under fee-for-service activity is reported as program income.
- Interest income is treated appropriately under the governing Federal regulation.
- Program income is identified and accounted for in program activities that generate income.
- Revenue in excess of costs in contracts with nonprofit or governmental entities is recorded as program income.
- Program income funds are liquidated before additional funds are requested for operation of the program.

Procurement: Obtain a copy of the entity's procedures applicable to procurement and a listing of sub-grant/contract awards and purchases for the period under review. A selection should be made using the following guidelines and a review made to determine if the award or purchase was made in compliance with the appropriate procurement procedures. The procurements selected should be those that were obtained through a competitive or sole source process (customized/tailored procurements) and not vendor or off-the-shelf purchases.

In forming this opinion, consider the following:

- The entity has a written code of conduct governing performance of employees involved in the procurement process.
- There is sufficient documentation that demonstrates the procurements were made on a competitive basis.
- If not competitive, the entity sufficiently justified the award.
- Purchases were not divided to stay within the small purchase limitation (\$25,000 or lower threshold applicable to entity).
- There is documentation that a cost or price analysis was performed on each of the awards.
- Where applicable, procurements were sufficiently advertised.
- The entity has a dispute process.
- The entity determined that all awardees were responsive and responsible.
- There is evidence that demonstrated performance was considered in the making of awards.
- The awards/contracts contain a clear statement of work.
- The contracted costs are allowable.
- The contract provisions in the governing Federal regulations (e.g., Appendix A of 29 CFR Part 95 and 29 CFR 97.36) are included in awards, where applicable. These include but are not limited to the following:
 - Remedies (only for those contracts in excess of small purchase threshold),
 - Termination (for convenience or default) (only for those contracts in excess of small purchase threshold),
 - Access to records (only for those contracts in excess of small purchase threshold),
 - Equal Employment Opportunity (EEO),
 - Clean Air Act/Federal Water Pollution Control Act (contracts exceeding \$100,000),
 - Debarment Certification 29 CFR Part 98 (Contracts exceeding \$100,000), and
 - Lobbying Certification 29 CFR Part 93 (Contracts exceeding \$100,000).
- Records are adequately maintained to document the significant history of each procurement action, including the basis for contractor selection or rejection, the rationale for the contracting method and the contract type, justification for lack of competition (when appropriate), and the basis for a fair price in accordance with the administrative requirements of the governing Federal regulation (e.g., 29 CFR 95.46 and 97.36(b)(9)).

Equipment Management: The requirements for use, management, and disposal of grant-purchased equipment are found in the Federal regulations (OMB Circular A-102 and A-110) and the governing program regulations (e.g., 29 CFR 95.34 and 29 CFR 97.32(c) through (e)).

Equipment for the purpose of this review is defined as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit or any more restrictive definition imposed by the entity.



Render an opinion based on those requirements. The opinion should address the following:

- Equipment is clearly marked and inventoried by funding source.
- There are written procedures which contain:
 - Requirements for the conduct of a physical inventory every two years,
 - Methods for sale or disposition of equipment,
 - Maintenance, and
 - Requirements to account for the status of property at closeout.
- The equipment inventory contains at a minimum the following information:
 - Description of equipment,
 - Location and use,
 - Serial number,
 - Purchase price and date,
 - Percentage of Federal participation in the purchase,
 - Title,
 - Acquisition date,
 - Condition,
 - Control system for loss, theft, or damage, and
 - Disposal date and sale price, if applicable.

When looking at property disposition procedures, review for treatment of aggregate supplies of \$5,000 or more.

Subgrantee/Vendor Fiscal Oversight: Form an opinion on the adequacy of the process by which the entity conducts oversight of its vendors and other subrecipients.

Consider if:

- The entity has a written process for consistent review of subcontractor/subrecipient operations including One-Stop management and youth activities.
- The entity has a formal schedule for the conduct of reviews to ensure that oversight is conducted on an annual basis.
- The entity is complying with any additional requirements set forth by its awarding agency regarding the conduct of the reviews.
- The review process covers all fiscal and administrative compliance requirements.
- There is a timely process for notifying the subcontractor/subrecipient of any findings resulting from the review.
- There is a written administrative process for the resolution of findings resulting from reviews.

Complaints/Grievances: Render an opinion on the entity's system and process for the resolution of complaints from program participant, service providers, and vendors. The requirement for the maintenance of a complaints process is found at WIA Sections 188 and 181(c), 29 CFR Part 37, and 20 CFR 667.600 through 667.650.

The opinion should address:

- The entity's written procedure for addressing client and other interested party complaints/grievances.
- How any complaints filed or ongoing during the review period were or are being addressed.
- The adequacy of the complaint resolution and appeals processes as defined in 20 CFR 667.600;

Audits: States, local governments, institutions of higher education, hospitals, and non-profit organizations must follow the audit requirements of OMB Circular A-133. Commercial organizations (including for-profit hospitals) are subject to the requirements of the individual funding sources, which depending on the funding source can require: an organization-wide audit conducted in accordance with OMB Circular A-133; a program specific financial and compliance audit; an audit conducted in accordance with the Government Auditing Standards; or an audit that meets the requirements contained in OMB Circular A-133.



Subpart D of OMB Circular A-133 also requires entities to ensure that their subrecipients and subcontractors comply with the above requirements. Review the entity's audit tracking process and render an opinion on whether or not it has complied with the requirements of OMB Circular A-133 and/or the funding source of the award. In forming that opinion, consider the following:

- There is a system for identifying all of those subrecipients and subcontractors subject to audit requirements.
- The system tracks when audits are to be conducted and issued.
- The entity has an oversight process, which ensures that its subrecipients and subcontractors procure audits timely and in accordance with the requirements of OMB Circular A-133 regarding the selection and independence of the auditor.

Audit Resolution: OMB Circular A-133 requires the entity to issue a decision on audit findings within six months from the receipt of the audit report from their subrecipients and subcontractors. Review the entity's resolution process and determine the following:

- The entity has a process for making a determination on findings identified in the audit report within six months of the audit's receipt.
- The entity has a process for follow-up on administrative findings to ensure corrective actions have been taken.
- The entity has an oversight process, which ensures that its subrecipients and subcontractors procure audits timely and in accordance with the requirements of OMB Circular A-133 regarding the selection and independence of the auditor.

For audit resolution, the procedures should incorporate:

- Timely written notice to the auditee which would include:
 - Identification of the findings,
 - A determination as to their allowance and disallowance, and
 - A basis for each decision (regulations, laws, grant terms);
- A process for informally resolving issues;
- A timely appeals process; and
- An impartial hearing process.

Debt Collection: Obtain the entity's debt collection standards and procedures for debts arising from, audits, monitoring reports, and investigations.

Review the entity's process and determine the following:

- A process exists for identifying and tracking outstanding debts;
- There is a process for debt collection that includes:
 - Formal notification,
 - Timeframes, and
 - Charging of interest when applicable.
- Criteria for requesting waivers of liability from the Grant Officer.

Closeout System: In order for the entity to comply with its awarding agency's Federally mandated closeout requirements and timeframes, a process must be established for the timely submission of final expenditure reports by its lower-tiered subrecipients/subcontractors. Review the entity's process and render an opinion on the procedures it uses to compile its closeout report to the awarding agency. Consider the following:

- Written closeout procedures and policies are established including post-closeout requirements for record retention and audit.
- Timeframes for the submission of closeout data by lower-tiered subrecipients/ subcontractors.
- Sanctions for those lower-tiered entities that do not comply with the closeout requirements.



1.102 OUT OF SCOPE - RESERVED

1.103 ENVIRONMENT

The Contractor shall have experience with the Federal laws, rule, regulations, and other resources that impact the topics being reviewed under this agreement. The following is not intended to be a comprehensive listing of all the resources necessary to conduct the reviews, but is being provided as a sample of the necessary resources.

Laws:

- 29 U.S.C. 2801 et. seq.
- Workforce Investment Act of 1998

Regulations:

- 20 CFR Part 652 and Parts 660 through 671 (Workforce Investment Act regulations)
- 29 CFR Part 37 [Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998(WIA)]
- 29 CFR Part 95 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction Of Foreign Governments and International Organizations) [Office of Management and Budget (OMB) Circular A-110]
- 29 CFR Part 96 (Audit Requirements for Grants, Contracts, and Other Agreements)
- 29 CFR Part 97 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) [OMB Circular A-102]
- 29 CFR Part 98 [Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)]
- 29 CFR Part 99 (Audits of States, Local Governments and Non-Profit Organizations) [OMB Circular A-133]
- 31 CFR Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers)
- 45 CFR Part 74 (Uniform Administrative Requirements for Awards and Sub-awards to institutions for higher Education, Hospitals, Other Non-Profit Organizations and Commercial Organizations) [OMB Circular A-110]
- 45 CFR Part 92 (Uniform Administrative Requirements For Grants And Cooperative Agreements To State, Local, And Tribal Governments) [OMB Circular A-102]
- 45 CFR Part 260 (Temporary Assistance for Needy Families (TANF); Final Rule)
- 45 CFR Part 263 (Expenditures of State and Federal TANF Funds)
- 48 CFR Part 31 (Contract Cost Principles and Procedures)

Notices:

- Federal Register Notice, May 31, 2001, Resource Sharing for Workforce Investment Act One-Stop Centers (66 Fed. Reg. 29638)

OMB Circulars:

- A-21 (Cost Principles for Educational Institutions)
- A-87 (Cost Principles for State, Local, and Indian Tribal Governments)
- A-102 (Common Rule – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments)
- A-110 (Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations)
- A-122 (Cost Principles for Non-Profit Organizations)
- A-133 (Audits of States, Local Governments, and Non-Profit Organizations)

Technical Assistance Guides:

- One-Stop Comprehensive Financial Management Technical Assistance Guide (July 2002)
- Department of Labor, Office of the Assistant Secretary for Administration and Management, Indirect Rate Cost Determination Guide, Cost Principles and Procedures for Non-Profit Organizations.

1.104 WORK AND DELIVERABLE

See 1.101 In Scope

1.2 Roles and Responsibilities**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

See 1.101 In Scope

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

See 1.101 In Scope

1.203 OTHER ROLES AND RESPONSIBILITIES1.3 Project Plan**1.301 PROJECT PLAN MANAGEMENT - Reserved****1.302 REPORTS**

1.101 In Scope

1.4 Project Management**1.401 ISSUE MANAGEMENT - RESERVED**



1.402 RISK MANAGEMENT

During the review, the Contractor should use a risk-based approach that includes consideration of current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the program under review.

CRITERIA FOR DETERMINATION OF PROGRAM RISK

The guidelines discussed in this section are based primarily on those that are required to be used by an auditor in accordance with the provisions found in OMB Circular A-133. They do not necessarily need to be strictly applied in assessing risk status for the purpose of a monitoring review.

The determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal programs. The Contractor should use their best professional judgment and consider criteria, such as described below, to identify risk. Also, as part of the risk analysis, prior to going on-site, the Contractor may wish to discuss a particular program with the DLEG Internal Audit and Monitoring Division and review prior monitoring reports for disclosure of issues related to noncompliance with legislative, regulatory, and contract/grant requirements.

When making a determination of risk, the Contractor should consider any known or apparent weaknesses in the entity's internal controls that would indicate higher risk. Consideration should be given to the control environment and such factors as the expectation of management's adherence to applicable laws, regulations, and provisions of contracts and grant agreements, as well as the competence and experience of personnel who administer the programs. The Contractor should be aware that programs administered under multiple internal control structures might have higher risk. When assessing risk, the Contractor should consider whether weaknesses are isolated in a single operating unit or pervasive throughout the entity.

Another consideration is the strength of the entity's monitoring system if funds are passed through to subrecipients. A weak system for monitoring subrecipients would indicate higher risk.

The Contractor, in assessing risk, should consider the extent to which computer processing is used to administer the Federal programs. Internal controls such as security of data input and validation of reported data should be considered in the financial reporting process.

Prior audit or other review findings may indicate higher risk, particularly when the situations identified in the audit or other review findings could have a significant impact on the program or have not been corrected. Programs not recently reviewed should be considered higher risk than programs recently reviewed without any financial and/or administrative findings.

Risk may also be impacted by the nature of the agency under review. Consideration should be given to the complexity of the agency and the extent to which the agency contracts for goods and services. For example, agencies that disburse funds through third-party contracts or that have eligibility criteria may be of higher risk than an agency that directly operates its programs. Agencies administering programs primarily involving staff payroll costs may have a high risk for time and effort reporting, but otherwise be at low risk. The phase of a program in its life cycle may also indicate risk. For example, a new program with new or recently modified regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk. For example, during the first and last years that an administrative agency participates in a program, the risk may be higher due to start-up or closeout of program activities.

For a program to be considered low risk, it shall have been reviewed as a major program in at least one of the two most recent audit periods and, in the most recent audit period, it shall have had no review findings. However, the Contractor may use judgment and consider findings from administrative issues or questioned costs and the associated follow-up in his/her determination of risk. The Contractor shall consider the results of corrective action and whether any changes in personnel or systems affecting a program have significantly increased risk. The Contractor should then apply professional judgment in determining whether a program is low risk.

An entity that meets all of the following conditions for each of the preceding two years shall qualify as a low-risk program and be eligible for reduced review coverage:



- Single audits were performed in accordance with their required cycle.
- The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified.
- There were no deficiencies in internal control that were identified as material weaknesses under the requirements of Generally Accepted Government Auditing Standards (GAGAS).
- None of the Federal programs had audit findings from any of the following in either of the preceding two years:
 - Internal control deficiencies that were identified as material weaknesses;
 - Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the program; or
 - Known or likely questioned costs that exceed five percent of the total Federal awards expended for a program during the year.

An entity may be considered high risk if:

- The entity has a history of unsatisfactory performance. An award to the subgrantee within the past three years that resulted in
 - An expenditure rate less than 80 percent of the awarded funds, and/or
 - An expenditure rate in excess of 110 percent of the budgeted amount.
- The entity is not financially stable:
 - The entity's award represents more than 75 percent of its annual budget;
 - The entity requires an advance of funds greater than 10 percent of the award;
 - During a previous award, the entity was not able to liquidate a cash advance within 30 days; and/or
 - The entity does not have a reliable source of non-Federal funds equal to at least 25 percent of the award.
- Prior reviews disclosed that the entity has a management system that does not meet the following standards:
 - Financial reporting. The entity must demonstrate the ability to provide accurate, current, and complete disclosure of the financial results of financially assisted activities in accordance with the financial reporting requirements of the grant/subgrant.
 - Accounting records. The entity must demonstrate the ability to maintain records that adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant/subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
 - Internal control. The entity must demonstrate the ability to maintain effective control and accountability for all grant/subgrant cash, real and personal property, and other assets. The entity must demonstrate the ability to adequately safeguard all equipment purchased with grant/subgrant funds and must assure that it is used solely for authorized purposes.
 - Budget control. The entity must demonstrate the ability to compare actual expenditures or outlays with budgeted amounts for each grant/subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant/subgrant agreement. If unit cost data is required, estimates based on available documentation will be accepted whenever possible.
 - Allowable cost. The entity must demonstrate the ability to follow applicable OMB cost principles, agency program regulations, and the terms of the grant agreement in determining the reasonableness, allowability, and allocability of costs.
 - Source documentation. The entity must support accounting records by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
 - Cash management. The entity must follow procedures for minimizing the time elapsing between the transfer of funds from the United States (U.S.) Treasury and/or grantee and disbursement whenever advance payment procedures are used. Grantees/Subgrantees must establish reasonable procedures to ensure the receipt of reports on sub-subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transaction reports to the awarding agency. When advances are made by letter-of-credit or electronic-fund-transfer methods, the subgrantee must make drawdowns as close as possible to the time of making disbursements.
- The entity has not conformed to terms and conditions of previous awards. The entity, as a result of a formal review or audit during the past three years, has been found out of compliance with any of the following grant/subgrant provisions:
 - Reporting in an accurate and timely manner;
 - Enrolled individuals who were determined not eligible for the fund source; and/or
 - Failed to resolve complaints or findings within 60 calendar days.



- The entity cannot demonstrate that it has:
 - A defined method to account for and report program income where appropriate;
 - A working understanding of the legislation, implementing regulations, circulars; and State and local policies impacting the award;
 - Sufficient staffing to ensure separation of duties;
 - Conducted an audit of its activities during the past year; and/or
 - Resolved administrative findings resulting from monitoring, audit, or other reviews.
- The entity has experienced a change in its key personnel or practices. The entity has a vacancy or during the past year replaced staff in any of the following positions:
 - Program Director/Administrator,
 - Chief Financial Officer, and/or
 - Chief Program/Fiscal Monitor.
- The entity has a history of disallowed costs. The entity has an audit, monitoring report, or other report that questions or disallows costs associated with a program funded with Federal, State, or local funds.

An entity that does not have prior experience managing federal grants should be considered high risk; however, the Contractor must use their best professional judgment while assigning risk to any entity considered for review.

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 Deliverable provided under the SOW.

The Director of the Internal Audit and Monitoring Division and/or his designees will review and approve each quarterly report. If at any time the Director of the Internal Audit and Monitoring Division finds the services and/or deliverables are not being provided, a meeting will be scheduled to discuss in detail.

1.502 Final Acceptance

Final acceptance will be granted when all quarterly reports have been approved by the Director of the Internal Audit and Monitoring Division and/or his designees.

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

To be used for Contract:

It is expected that the contract may take approximately 1,000 – 1,500 hours per year to complete.

State shall pay Contractor an amount to be determined for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Authorized Services and Price List as follows (use separate pages, marked as Article 1, Attachment A, if necessary for the price schedules relevant to each Statement of Work):

1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW –

Any known potential conflict of interest must be disclosed by the bidders. Any bidder who has a conflict of interest or the appearance of a conflict of interest with the entities being monitored will be notified and excluded from the bid process.



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;



- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
 - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
 - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Office of Acquisition Services ("OAS") and Department of Labor & Economic Growth (collectively, including all other relevant State of Michigan departments and agencies, the "State"). OAS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **OAS is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Office of Acquisition Services for this Contract is:

Andy Ghosh
Office of Acquisition Services
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: ghosha@michigan.gov
Phone: 517-373-7396

2.015 Contract Compliance Inspector

Upon receipt at OAS of the properly executed Contract, it is anticipated that the Director of DMB Acquisition Services, in consultation with DLEG, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Acquisition Services.** The Contract Compliance Inspector for this Contract is:

Mike Wurmlinger
Department of Labor and Economic Growth
Bureau of Workforce Programs
611 W. Ottawa St. Upper Level, Lansing, MI 48913
(517) 373-2126 or wurmlingerm1@michigan.gov

2.016 Project Manager

The following individual will oversee the project:

Name:

Mike Wurmlinger
Department of Labor and Economic Growth
Bureau of Workforce Programs
611 W. Ottawa St. Upper Level, Lansing, MI 48913
(517) 373-2126 or wurmlingerm1@michigan.gov

2.020 Contract Objectives/Scope/Background**2.021 Background - Reserved****2.022 Purpose**

The purpose of this RFP is to establish a Contract for on-site compliance monitoring reviews of the fiscal and administrative requirements for the federal employment and training funds administered by the Department of Labor and Economic Growth, Bureau of Workforce Programs.

2.023 Objectives and Scope - Reserved**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

2.025 Form, Function and Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.030 Legal Effect and Term**2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel

**2.041 Contractor Personnel**

(a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.



(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 Contractor Identification

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

**2.044 Subcontracting by Contractor**

(a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

(e) 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.

2.045 Contractor Responsibility for Personnel

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

2.050 State Standards**2.51 Existing Technology Standards – RESERVED****2.052 PM Methodology Standards - RESERVED****2.053 Adherence to Portal Technology Tools – RESERVED.**

**2.054 Acceptable Use Policy**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.060 Deliverables**2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

2.062 Software - RESERVED**2.063 Hardware – RESERVED****2.064 Equipment to be New and Prohibited Products - RESERVED**2.070 Performance**2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages - RESERVED

**2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

2.076 Service Level Agreements (SLAs) – RESERVED2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities - RESERVED****2.082 Delivery of Deliverables**

(a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.083 Testing

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.



2.084 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.
- (d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.
- (e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
- (f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

2.085 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge.



Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.086 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.087 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). 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.

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C** Unless specifically identified in an applicable Statement of Work.



(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.

(d) Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

(e) Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

(f) Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.



2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback

The State shall have the right to hold back, as a retainage, an amount equal to FIFTY percent 50% of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

2.095 Electronic Payment Availability

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004, requires all payments be transitioned over to EFT by October, 2005.

2.100 Contract Management

2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

2.103 Reports and Meetings

(a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.



(viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.

(ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

2.104 System Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

2.105 RESERVED

2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.



(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Acquisition Services.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections

2.111 Records and Inspections

(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 at all reasonable times, 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 reasonably 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.

(b) Examination of Records. 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 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, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

2.112 Errors

(a) 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.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) **Return.** Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security**2.131 Background Checks**

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit-service/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved2.150 Confidentiality**2.151 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.152 Confidentiality

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

2.153 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract.



Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

**2.159 Destruction of Confidential Information**

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

2.160 Proprietary Rights**2.161 License - RESERVED****2.162 Source Code Escrow - Reserved****2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

(b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

2.164 Ownership of Materials - RESERVED**2.165 Standard Software - RESERVED****2.166 Pre-existing Materials for Custom Software Deliverables - RESERVED****2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.



(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It 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 licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) 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 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.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) 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.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP 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 change in the business, properties, financial condition, or results of operations of Contractor.

(m) 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.

(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

**2.172 Software Warranties - Reserved****2.173 Equipment Warranty - Reserved****2.174 Physical Media Warranty - Reserved****2.15 Standard Warranties - RESERVED****2.176 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

2.180 Insurance**2.181 Liability Insurance****(a) Liability Insurance**

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

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are 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. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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 the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Acquisition Services, certificate(s) of insurance verifying insurance coverage ("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 coverages 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 the applicable coverage is provided by a self-insurer, 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. 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.

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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



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

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) 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.

(c) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, 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 benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, 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 provisions.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees 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 patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or 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 to the State's satisfaction 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.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

**2.192 Continuation of Indemnification Obligations**

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

2.193 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 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.

2.200 Limits of Liability and Excusable Failure**2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000, 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; 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.



Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark 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; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; 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 commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business 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/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

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/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and 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.

2.203 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

2.210 Termination/Cancellation by the State

The State may terminate 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:



2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), 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 (such time period not to be less than thirty (30) days), 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 termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

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

2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be 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 Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

2.213 Non-Appropriation

(a) 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 Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

**2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including 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 Contractor's business integrity.

2.215 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, § 5, and Civil Service Rule 7-1. 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.

2.216 Rights and Obligations Upon Termination

(a) 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 Deliverables 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 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.

(b) 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 Work In Process, on a percentage of completion basis at the level of completion determined by the State. 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.

(c) 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 deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

Any termination of this 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.

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, 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 this 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 ninety (90) days. These efforts shall include, but are not limited to, the following:



(a) 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 this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, 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 or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

(b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this 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. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this 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) at the rates specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

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:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 Stop Work Orders - RESERVED

2.232 Cancellation or Expiration of Stop Work Order - RESERVED



2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Acquisition Services, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Acquisition Services, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

**2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements**2.261 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.270 Litigation**2.271 Disclosure of Litigation - RESERVED****2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.273 Compliance with Laws

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

**2.274 Jurisdiction**

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.280 Environmental Provision**2.281 Environmental Provision - RESERVED**2.290 General**2.291 Amendments**

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign 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 other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

2.294 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 the Contract.

2.295 Relationship of the Parties (Independent Contractor Relationship)

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of 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. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.296 Notices**

(a) Any notice given to a party under the Contract 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.

State:

State of Michigan
Office of Acquisition Services
Attention: Andy Ghosh
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

with a copy to:

Mike Wurmlinger
Department of Labor and Economic Growth
Bureau of Workforce Programs
611 W. Ottawa St. Upper Level, Lansing, MI 48913
(517) 373-2126 or wurmlingerm1@michigan.gov

Contractor(s):

Name: Michael T. Gaffney
Address: 108 N. Spring Street
St. Johns, MI 48879
(989) 224-6836

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) Binding Commitments

Representatives of Contractor identified in **Article 1, Attachment B** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

2.297 Media Releases and Contract Distribution

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) 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.

2.298 Reformation and 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.

**2.299 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

2.300 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.

2.301 Survival

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.303 Permits

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.304 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.

2.305 Taxes

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

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

2.306 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 Labor and Economic Development, Wage and Hour Bureau, 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 Labor and Economic Development, 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.

2.307 Call Center Disclosure

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State 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 Contract.

2.308 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis. To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.322 State Employee Purchases - Reserved

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required. Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html

http://www.archives.gov/federal_register/codification/executive_order/12549.html

http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf

<http://www.epls.gov/epls/servlet/EPLSSearchMain/1>

APPENDIX A

**TECHNICAL PROPOSAL (EXCERPTS ONLY)
CONTRACT NO. 071B6200046**

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
Lansing, Michigan**

**TECHNICAL AND PRICE PROPOSAL TO PERFORM
FISCAL AND ADMINISTRATIVE
COMPLIANCE MONITORING SERVICES**

**Program Years Ending
September 30, 2006, 2007 and 2008**

Submitted By:

Abraham & Gaffney, P.C.
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Contact Person:

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Principal

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Date Submitted:

August 23, 2005

Project Identification

We will conduct on-site compliance monitoring reviews of the fiscal and administrative requirements for the federal and state employment and training funds administered by the Department of Labor and Economic Growth (DLEG), Bureau of Workforce Programs (BWP). The on-site reviews will be conducted mainly in the Detroit Metropolitan area, with the possibility of other locations within the State of Michigan. Entities reviewed will include direct recipients of DLEG/BWP, as well as, the service providers and contractors of those direct grant recipients.

Scope of Work and Deliverables

We will conduct on-site reviews in the Detroit Metropolitan area.

The specific monitoring procedures to be completed will be procedures outlined in the “monitoring guides” that have been developed by MDLEG and agreed to by us (with input and feedback provided by us). Our monitoring procedures will require us to perform analysis, investigation, interpretation, summation, and presentation of complex financial and business-related issues relative to the fiscal and accounting operations. Our monitoring procedures will also include assessing compliance with laws, regulations, rules and policies governing the federal and state grants. The specific topics that will be included in the monitoring reviews will include, but will not be limited to, the following:

1. Budgeting Systems
2. Memorandum of Understanding
3. Cost Allocation
4. Cost Classification/Allowable Costs
5. Financial Management Systems
6. Cash Management
7. Program Income
8. Procurement
9. Equipment Management
10. Subgrantee/Vendor Fiscal Oversight
11. Complaints/Grievances
12. Audits
13. Audit Resolution
14. Debt Collection
15. Closeout System

After completion of the “agreed-upon procedures”, we will issue written “agreed-upon procedures” monitoring reports on a quarterly basis to the DLEG Internal Audit & Monitoring Division Director. These reports will indicate the procedures that were performed (i.e., reference made to agreed-upon monitoring guides), detail the specific noncompliance findings noted during the reviews, and also will provide recommendations for corrective actions to effect changes to fiscal, accounting, and administrative policies and procedures.

We will also meet periodically with DLEG staff (and possibly other governmental officials) to provide updates and communicate matters that require immediate attention.

As part of our ongoing preparation to perform audit and independent monitoring services related to federal grant programs, we are constantly reviewing and keeping up to date with our knowledge of the various laws, regulations, OMB Circulars, and other resources that are applicable to administration of the grants. We are familiar with all the applicable resources listed in Section 1.103.

Staffing, Roles and Responsibilities

The proposed staffing for this engagement is detailed in Section II of our proposal. We agree to abide by the roles and responsibilities as identified in Section 1.101 of the RFP.

Project Plan

Once the contract has been approved by the State Administrative Board, we would plan to meet with DLEG staff and other representatives of the State as needed to begin the planning process for this engagement. This would involve a determination of which direct recipient and/or recipients are scheduled to be monitored during each program year and gathering background information (i.e., prior audits and/or monitoring results, other information, etc.) on the direct recipients to be monitored. We also would obtain the “monitoring guides” from DLEG to be utilized during each program year to determine the topics to be covered and scope of the engagement. We would also obtain from DLEG the preliminary timeframes that is expected to be achieved during completion of the required monitoring procedures for each “monitoring guide” and direct recipient.

Based on our planning procedures, we would then provide DLEG a preliminary time schedule for completion of all significant components of the monitoring services for each direct recipient. We would also provide DLEG a preliminary staffing plan and estimate of the hours and resulting costs to perform the monitoring services for the applicable direct recipient (understanding that the actual hours and costs may vary from this estimate based on factors not to be determined until monitoring fieldwork has been commenced). We would also have questions clarified by DLEG on specific procedures identified in the “monitoring guide”, and if applicable will provide our feedback and suggestions for changes to the “monitoring guide” which we feel will result in a more efficient and effective monitoring service.

Once DLEG has approved the preliminary time schedules, staffing plan, time and cost estimates and the “monitoring guide”, we would then schedule and perform the monitoring services. We would provide a copy of the “monitoring guide” to the direct recipient prior to the monitoring visit along with a checklist of information they will need to have available during the monitoring visit. At the time of the site visit, we would conduct an entrance conference with the appropriate staff of the direct recipient and DLEG (if desired) to communicate the specific areas to be monitored and the expectations of each party during the monitoring process. We would perform the specific monitoring procedures outlined in the “monitoring guide”, and will note any instances of noncompliance. Copies of pertinent records (i.e., ledgers, worksheets, invoices, other documentation, etc.) will be obtained to support the completion of monitoring procedures and the exceptions noted during the monitoring. After completion of all monitoring procedures, we will conduct an exit conference with the appropriate staff of the direct recipient and DLEG (if desired) to communicate any exceptions noted during the monitoring and to provide preliminary recommendations for corrective actions.

Once the monitoring site visit is completed, we would then prepare a preliminary “independent monitoring report” for each direct recipient monitored. This report would be considered an “agreed-upon procedures” report whereas the report will reference our completion of specific monitoring procedures as agreed to by DLEG and our firm, and will detail the monitoring exceptions and/or findings noted as a result of completion of the monitoring procedures along with recommended corrective actions to be taken to address each exception. This report will be prepared and submitted to DLEG within 30 days of completion of the monitoring site visit. We will also prepare quarterly reports for DLEG which will highlight the significant monitoring issues that have been noted during the previous quarter and will also detail recommendations for improvements.

Project Management

The engagement principal/senior monitor assigned to your engagement will be responsible for management of this project. This individual will be directly involved in all planning procedures to assure proper planning and management of this engagement. Once the project plan has been developed and approved by DLEG, the engagement principal/senior monitor will oversee completion of the project plan and will inform DLEG if any components of the project plan that are not being met and will provide recommendations for changes to assure proper completion of all components.

One component of the project plan that could require changes is the nature and extent of monitoring procedures that are required at a particular direct recipient and/or subcontractor. As part of our monitoring procedures, we will be assessing the risk of material noncompliance with program requirements at each direct recipient that we monitor. We would be performing this risk assessment on an on-going basis as part of our planning procedures and also during the on-site monitoring visit (i.e., review of internal control environment and structures, competence of staff, complexities of programs, oversight of subcontractors, expenditure levels, performance achievements, completion of monitoring procedures, etc.). If we feel that the direct recipient has a higher risk of noncompliance with program requirements based on our review of the above mentioned items, we may suggest that the nature and extent of monitoring procedures identified in the “monitoring guide” be expanded to address the risk assessment. The resulting changes to the “monitoring guide” and also time and cost estimates would be communicated to DLEG and approval obtained prior to completion of the expanded monitoring procedures.

Acceptance

We understand the Director of the Internal Audit and Monitoring Division and/or his designees will review and approve the direct recipient monitoring reports and each quarterly report that we issue to DLEG. We also understand that at any time the Director of the Internal Audit and Monitoring Division finds that services and/or deliverables are not being provided, a meeting will be scheduled to discuss this in detail. We understand final acceptance will be granted when all quarterly reports have been approved by the Director of the Internal Audit and Monitoring Division and/or his designees.

Compensation and Payment

The cost of the independent monitoring services is based on the amount of time it takes to perform the services. We cannot determine a fixed price for this specific engagement, due to the fact that we do not know how many direct recipients and/or service provider's operations will be monitored, nor do we know the condition of the organization's accounting systems and/or extent of compliance with program requirements which will have an affect on the time requirements. As a result, we have provided below a cost estimate for these services based upon providing a certain number of hours of services and particular staff levels with the understanding that the costs cannot exceed \$150,000 annually. The hourly rates below have been calculated to take into consideration out-of-pocket expenses (i.e., out-of-pocket expenses would not be billed separately).

Fiscal Year 2005/2006

	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Michael T. Gaffney, CPA Principal/Senior Monitor	520	\$ 170	\$ 88,400
Dane M. Porter, CPA Monitor	400	80	32,000
Donald J. Bradley Monitor	400	70	28,000
Administrative	<u>20</u>	55	<u>1,100</u>
	<u>1,340</u>		<u>\$149,500</u>

Fiscal Year 2006/2007

	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Michael T. Gaffney, CPA Principal/Senior Monitor	500	\$ 175	\$ 87,500
Dane M. Porter, CPA Monitor	380	85	32,300
Donald J. Bradley Monitor	380	75	28,500
Administrative	<u>20</u>	60	<u>1,200</u>
	<u>1,280</u>		<u>\$149,500</u>

Fiscal Year 2007/2008

	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Michael T. Gaffney, CPA Principal/Senior Monitor	480	\$ 180	\$ 86,400
Dane M. Porter, CPA Monitor	365	90	32,850
Donald J. Bradley Monitor	365	80	29,200
Administrative	<u>20</u>	65	<u>1,300</u>
	<u>1,230</u>		<u>\$149,750</u>

Additional Terms and Conditions

Our firm currently provides audit and/or independent monitoring services to some DLEG direct recipients and/or service providers (see listing of clients in Section II of our proposal). Since we do not know which direct recipients and/or service providers will be encompassed in the scope of these services, we cannot currently determine if there will be any potential conflict of interest related to these services.

To address this issue, during the annual planning stages of our monitoring procedures, once it is determined which direct recipients will be included in the scope of the monitoring services for that year, we will determine (in consultation with DLEG) whether there appears to be a conflict of interest related to the monitoring services for that year. If it is determined that a conflict does exist, we will request approval from DLEG to procure an independent subcontractor to perform these monitoring services.

The proposed subcontractor organization, staffing plan and proposed fees/rates will be approved by DLEG prior to any work being performed. We understand that we take full responsibility for the successful performance and completion of all services and deliverables provided by the subcontractor, and that we will be the sole point of contact with DLEG related to any services provided by the subcontractor. We will assure that the subcontract organization is bound by the same terms of our contract with DLEG.

Quality Control Programs

We periodically have a peer review performed on our firm in which our firm's policies and procedures are audited. The result of our latest review was an unqualified (i.e., clean) opinion on our procedures (see Exhibit III). Since governmental and nonprofit accounting and auditing represent a significant portion of our practice, this review included specific governmental and nonprofit engagements.

We annually attend seminars sponsored by the AICPA and MACPA pertaining to the development of quality control in CPA firms. Also, we cooperate extensively with the State of Michigan's financial reporting quality control programs.

All of our Single Audits have been subjected to desk reviews by Federal and State agencies, and we have always received acceptable results on these reviews. We have also received acceptable results on all Federal or State field reviews of our Single Audits. As mentioned previously, our principals have extensive experience with the Single Audit which assures that audit coverage and reporting requirements are met.

STAFFING

An important consideration in selecting a monitoring firm is the personnel assigned to your engagement. Because of the size of our firm and the expertise of our personnel, we are committing a limited number of highly qualified individuals. The engagement principal assigned to your engagement has significant monitoring experience and will work directly on the engagement. The other individuals assigned to your engagement will work under the direct supervision of the engagement principal. See Exhibit I for an organization chart for this engagement, and also Exhibit II for the resumes of these individuals.

All audit and monitoring team members obtain continuing professional education through AICPA, MACPA, and in-house training programs as required, primarily in the area of governmental and nonprofit accounting and auditing. All members of the audit and monitoring team obtain at least 40 hours of training annually. The principal who will work on your audit has completed the Governmental Accounting and Auditing Certificate of Educational Achievement Program, which constituted 64 hours of training in governmental accounting and auditing. Also, our engagement team has attended numerous training courses sponsored by Michigan Works!. We also subscribe to the MDLEG Policy Letters and the national publication Employment and Training Reporter, which keeps us abreast on State and Federal employment and training issues.

Engagement Principal/Senior Monitor - Michael T. Gaffney, CPA, is considered a key individual on this engagement and will be the individual in charge of all fieldwork and reporting requirements for your engagement. Mr. Gaffney has over twenty (20) years of governmental and nonprofit auditing experience including auditing and monitoring of employment and training programs and providing technical assistance to clients as needed. Mr. Gaffney is the principal in-charge of all of our employment and training audit and monitoring engagements.

Mr. Gaffney will perform the following duties, which include but are not limited to:

1. Initial and subsequent contact with DLEG, direct recipient staff and subcontractors, and establishment of the scope of the engagement.
2. Work with DLEG in development and approval of monitoring guides and programs.
3. Conduct initial survey of internal controls at direct recipient and subcontractor levels.

4. Performance of specific monitoring procedures as required.
5. Supervision of monitoring team.
6. Review of monitoring team workpapers to establish adequate coverage.
7. Resolution of questions and/or disallowed costs (if any) and how they are handled in the report based on the materiality of the findings, if any.
8. Drafting and review of required reports.
9. Meetings with DLEG and other representatives on an as needed basis.
10. Performance of technical assistance services as requested.

As indicated in Section II, Mr. Gaffney has attained extensive experience with employment and training programs. Because Mr. Gaffney will be on-site performing a significant amount of monitoring fieldwork, he will be highly accessible to provide valuable management recommendations on a timely basis.

Monitor - Dane M. Porter, CPA, will be a monitor assigned to your engagement. Mr. Porter has over four (4) years of experience working exclusively with our governmental and nonprofit clients. Mr. Porter has worked on various governmental and nonprofit audit and independent monitoring engagements, and also has considerable experience performing program specific audits of federal program child care food providers under a State contract with the Michigan Department of Education.

Monitor - Donald J. Bradley will be a monitor assigned to your engagement. Mr. Bradley works exclusively with our governmental and nonprofit clients. Mr. Bradley has worked on various governmental and nonprofit audit and independent monitoring engagements. Mr. Bradley has worked on the South Central Michigan Works, Oakland County Michigan Works!, Capital Area Michigan Works, and Career Alliance WFB monitoring engagements and the Berrien-Cass-Van Buren WFB audit.

Mr. Porter and Mr. Bradley will perform the following duties, which include but are not limited to:

1. Conduct initial survey of internal controls at subcontractor level.
2. Performance of specific monitoring procedures as required.
3. Drafting of required reports.
4. Performance of technical assistance services as requested.

Because we are committing a small team of highly qualified individuals, you will not have to worry about team members working on the engagement who are not knowledgeable of employment and training systems or the changing of team members part way through the engagement. Our philosophy is to have continuity of team members on a particular engagement, so as to take advantage of knowledge gained from experience. Also, our principals perform a considerable amount of the fieldwork, which assures continuity.

To maintain our high degree of quality control, all team members will be supervised and reviewed by a principal. Also, all work product and reports prepared by a principal are reviewed by an independent principal to assure consistent application of quality control procedures.

We currently are not planning to utilize any subcontractors to perform these services. However, if the need for a subcontractor is determined as identified in Section I of our proposal, we would conduct a procurement process to select a subcontractor and would obtain approval from DLEG prior to awarding the subcontract.

DISCLOSURES

No employees, officers, or subcontractors of Abraham & Gaffney, P.C. has assisted in the drafting of the RFP related to these services, either whole or in part.

Abraham and Gaffney, P.C. does not wish to participate in the MIDEAL - EXTENDED PURCHASING program with other governmental organizations related to this RFP. As a result, the following statement is included to confirm this fact:

NON-STATE AGENCY STATEMENT

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget to provide purchasing services to other governmental organizations. As a result of the enactment of this legislation, the MIDEAL Program has been developed. This program extends the use of state contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of governments secure a greater return for the expenditure of public funds. It is the policy of the Office of Acquisition Services, Department of Management and Budget, that the final approval to utilize any such contract in this manner must come from the contract vendor.

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

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

BIDDER MUST CHECK ONE BOX BELOW

- Commodities and/or services on this Request of Quotation will be supplied to State of Michigan departments and agencies, and authorized MIDEAL Program members in accordance with the terms and prices quoted. A complete listing of eligible participants in the MIDEAL Program will be provided if this option is selected.
- Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized MIDEAL members. We will supply to State of Michigan departments and agencies only.

Abraham & Gaffney, P.C.
Vendor Name

Michael T. Gaffney, CPA, Principal
Authorized Agent Name (print or type)

Authorized Agent Signature