



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Request For Proposal No. 07118200257

Asbestos Abatement Services - STATEWIDE

Buyer Name: Lymon C. Hunter, CPPB
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E-Mail Address: HunterL@michigan.gov

Estimated Timeline:

Key Milestone:	Date:
Issue Date	Wednesday July 9, 2008
Mandatory Pre-Bid Meeting	July 30, 2008
Questions Due	Friday August 8, 2008
Bid Due Date	Friday, August 28, 2008
Anticipated Contract Start Date	November 1, 2008

RFP Checklist for Bidder Proposal Contents and Responsiveness

This checklist is provided for your convenience to help remind you of the important requirements of the RFP. The list may not be all inclusive. The Bidder is responsible to read the RFP and submit all the required responses. If you have any questions concerning these requirements please contact the Buyer listed on the front page of this RFP document.

Article 1 & Location Specification Sheet(s) (LSS):

_____ Responses have been provided for all items requested in Article 1, Statement of Work, as requested. Technical Proposal Document/Requirements have been met and responses are included within the format designated by the State in Article 3.

_____ Price Proposal, Article 1, Section 1.6, for the project has been included in your proposal, according to the instructions laid out in Article 3 and using the format in the LSS(s). If the RFP requires that pricing be sealed separately, these directions must be followed, or the proposal may be viewed as noncompliant.

Article 2:

_____ Statement that a Certificate of Insurance will be provided as a condition of award has been included.

_____ Acknowledgment and concurrence with each term and condition listed in Article 2 of the RFP/RFP document has been provided within your proposal, with any comments or issues clearly identified.

Article 3:

_____ Attended any mandatory pre-bid meetings or site visit listed in Article 3.

_____ The complete proposal was submitted to the appropriate location and on time, with one signed original, the appropriate number of additional copies, and the instructed number of copies of the electronic version, on 3.5-inch disks or CD. Hard copy and electronic versions of pricing were sealed separately, if instructed to do so in Article 3.

_____ Bond requirements were met and submitted with the proposal (if applicable) per Article 3.

Article 4:

_____ Complete all items contained in Article 4, Certifications and Representations, initialing each paragraph requiring an initialed response, acknowledging each certification & representation, and providing all required information.

Article 5:

_____ Responses have been provided for all items requested in Article 5.

Other:

_____ A Letter of Submittal (285 Document) and a copy of the Certifications & Representations have been signed by an individual authorized to legally bind your company and the original signature copy has been submitted. Please note that for some responses the 285 form, which includes pricing, must be sealed separately from the technical response, according to the bidding instructions provided in Article 3. In cases requiring the pricing to be sealed separately, a signed 285 with the pricing field left blank should also be included with the technical response.

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DEFINITIONS

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“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.

“Audit Period” has the meaning given in **Section 2.112**.

“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.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“DMB” means the Michigan Department of Management and Budget

“Environmentally preferable products” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“Excusable Failure” has the meaning given in **Section 2.244**.

“Hazardous material” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential Bidders

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

“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.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Post-Consumer Waste” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“Post-Industrial Waste” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

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

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“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.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

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

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.

Article 1 – Statement of Work (SOW)

Note to Bidders: Proposals must include detailed responses to all tasks as requested in Article 1 and provide all information requested in Article 5. Bidders should provide thorough responses to each task, or, when appropriate, state their agreement that the Bidder will provide the requested services. Bidders are encouraged to provide detailed responses in order to allow the State to fully evaluate the Bidder’s capabilities.

As stated in Section 3.012 of this document, Bidders are reminded that the sole point of contact concerning the RFP is the Buyer, listed on the cover page of this document, in DMB-Purchasing Operations. Any communication by a potential Bidder in regards to this RFP with anyone other than the Buyer during the RFP process may result in disqualification and/or debarment.

Throughout this RFP, language referring to Contract or Contractor(s) refers to any Contract awarded from this RFP. This RFP in itself is not to be construed as a Contract.

1.010 Project Identification

1.011 Project Request

This is a Request for Proposal (RFP) for Asbestos Removal Services for various State of Michigan facilities. This is a formal request to prospective Bidders to solicit bids or price quotations. Bidders must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

Any awarded Contract(s) between the State and any awarded Contractor(s) is a separate document, whose terms are limited by Article 2.

1.012 Background

The ***Michigan Department of Management & Budget, Facilities Administration (FA), Design and Construction Division*** desires to obtain contractual services for Asbestos Removal. The purpose of this Agreement is to engage the technical and/or professional services of the Contractor in advance of this work, and to define the terms and conditions.

Consideration for award(s) for Asbestos Removal at DMB Managed Facilities will include Bidder’s eligibility (attendance at mandatory pre-bid meetings and/or site visits), technical proposal and/or Bidder Responses to this RFP, and price quotation. All responses/proposals must be in accordance with the specifications and the terms and conditions, as stated within this RFP.

Failure to respond to any requirement may disqualify the Bidder from further consideration and/or participation in this solicitation. To insure a quality bid result and fair evaluation, the information a Bidder submits in response to these sections must be appropriate and relevant to the project(s) described in this RFP.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor shall provide all personnel, equipment, tools, materials, supervision and other items and services necessary to perform the services as described in the Location Specification Sheet(s) (LSS).

Bidder Response:

1.022 Work and Deliverable

OBJECTIVES

General:

Labor and materials for the removal of limited quantities of asbestos containing materials (ACM) as identified by the **DMB, Facilities Administration, Design and Construction Division** and located in building areas at DMB-managed facilities. This service is to be billed as indicated on the attached bid sheet. Payment for services rendered will be made when work is completed and final documentation of the disposal manifest has been received by this agency.

Conduct and Standard of Work – Unless otherwise provided herein, the Contractor with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing, to complete the work. In determining whether or not the Contractor has performed with due diligence hereunder, it is agreed and understood that the Contract Compliance Inspector may measure the amount and quality of the Contractor's effort against the specifications. The Contract Compliance Inspector shall monitor the Contractor's work. The Contract Compliance Inspector may issue written or oral instructions to fill details in the specifications. **Coordination and oversight of asbestos removal activities, including air and bulk sampling as necessary, will be conducted under a separate contract with a professional industrial hygiene firm.** Any instructions that affect the scope of work, price, period of performance or any other provision of this Agreement must be in accordance with specific provisions of this Agreement.

SPECIFIC REQUIREMENTS/SPECIFICATIONS

The **Department of Management and Budget (DMB) is seeking to establish a contract for asbestos removal for DMB managed facilities.** Scope of work will range from incidental glovebag removal to large-scale abatement: generally less than \$25,000 per project. Work will be on an ad-hoc basis and contractor will be expected to respond within 24 hours.

PARTIES

This agreement is by and between the State of Michigan, Department of Management and Budget, Facilities Administration, Design and Construction Division (AGENCY) and (CONTRACTOR).

DURATION

The initial duration of this contract is from November 1, 2008 through November 1, 2011. At the discretion of the State, annual extensions of this contract may apply. This agreement is subject to Michigan Department of Civil Service approval and will not take effect prior to receipt of that approval; for those providing service which require license or registration, the AGENCY must receive verification of license or registration before any services may be provided under this contract. Civil Service approval and licensure or registration verification are conditions precedent to an effective agreement.

PURPOSE

The AGENCY desires to obtain contractual services for Asbestos Removal. The purpose of this Agreement is to engage the technical and/or professional services of the CONTRACTOR in advance of this work, and to define the terms and conditions.

CONTRACTOR RESPONSIBILITIES

The specific responsibilities of the CONTRACTOR regarding this Agreement are as follows:

Removal of asbestos containing material, re-insulate with asbestos free products and reinstall labeling as identified by State of Michigan construction standards (**See Attachment 1 & 2**). The contractor will dispose of asbestos containing material removed from the building in compliance with all state and federal regulations. Contractor must also be a licensed asbestos abatement contractor and maintain the license throughout the contract period. In addition, contractor must apply for and receive all permits, and/or notifications and meet all regulatory standards including

payment of required fees. This service is to be billed as indicated on the Pricing Sheet Summary. Payment for services rendered will be made when work is completed and final documentation of the disposal manifest has been received by this agency.

Conduct and Standard of Work – Unless otherwise provided herein, the CONTRACTOR with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing them to complete the work. In determining whether or not the CONTRACTOR has performed with due diligence hereunder, it is agreed and understood that the Contract **Manager** may measure the amount and quality of the CONTRACTOR'S effort against the specifications. The Contract Compliance Inspector hereunder shall monitor the CONTRACTOR'S work. The Contract Compliance Inspector may issue written or oral instructions to clarify details in the specifications or give written or oral direction in addition to those in the specifications with which the contractor must fully comply. **Coordination and oversight of asbestos removal activities, including air and bulk sampling as necessary, will be conducted under a separate contract with a professional industrial hygiene firm.** Any instructions that affect the scope of work, price, period of performance or any other provision of this Agreement must be in accordance with specific provisions of this Agreement.

In addition, the CONTRACTOR makes the following assurances:

1. Under no circumstances will the CONTRACTOR represent him or herself as an employee of the State of Michigan, the **Department of Management and Budget or the Facilities Administration, Design and Construction Division.**
2. The CONTRACTOR agrees that he/she will not at any time either during or after the terms of this Agreement reveal, divulge or make known to any person, firm or corporation any confidential information whatsoever in connection with the **Department of Management and Budget, Facilities Administration, Design and Construction Division** or its tenants.
3. The interest of the CONTRACTOR under this Agreement is not assignable.
4. The CONTRACTOR assures that he/she presently has no personal or financial interest and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of the services under this Agreement, no persons having such interest shall be employed. The CONTRACTOR further assures that no officer, member or employee of the State and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.
5. The CONTRACTOR agrees not to discriminate against an employee, recipient of services or members of the general public solely on the basis of race, color, religion, national origin, age, sex, height, weight, marital status, arrest record, mental or physical handicap, or on a basis which is prohibited by local civil rights laws.
6. The CONTRACTOR agrees to save harmless and indemnify the State of Michigan, and the AGENCY, from and against all loss, liability or expense that may be incurred by reason of any claim rising out of or in connection with the CONTRACTOR'S work and that the CONTRACTOR shall, for the term of the contract, maintain asbestos specific liability insurance, on an occurrence basis.
7. The CONTRACTOR will provide public liability, property damage, and worker's compensation insurance, insuring, as they may appear, the interests of all parties to this agreement against any and all claims, which may arise out of the CONTRACTOR'S operations under the terms of this Agreement.
8. The CONTRACTOR assures the AGENCY that his/her license of registration to provide this service is current. Prior to this Agreement going into effect, the CONTRACTOR agrees to provide the AGENCY with a photocopy of their license/registration. It is agreed that in the event any carrier of such insurance exercises cancellation, notice will be made immediately to the Facilities Administration, Design and Construction Division of such cancellation.

9. Health, Safety and Fire Codes – The CONTRACTOR shall comply with all applicable fire, health, and safety codes and shall provide appropriate evidence upon request by the Contract Compliance Inspector. Furthermore, the contractor must provide a copy of compliance with the respiratory protection program, acceptable to the State of Michigan prior to the execution of any contract.
10. Accounting Requirements – The CONTRACTOR shall maintain accounting records in accordance with generally accepted accounting procedures. The CONTRACTOR shall maintain adequate expenditure documentation. The CONTRACTOR acknowledges that the **Facilities Administration, Design and Construction Division**, based on audit findings, may disallow any expenditures which are not adequately documented or are not in accordance with the terms of this Agreement and/or the **Facilities Administration, Design and Construction Division** and federal guidelines pertaining to the use of these funds. Financial records and supporting documentation shall be retained by the CONTRACTOR and available for audit purposes for three years or until a federal or state approved audit is completed, whichever occurs first. The CONTRACTOR will include, or incorporate by reference, the above provisions in every sub-agreement and will provide that said provisions will be binding upon each subcontractor.
11. The CONTRACTOR shall make audit of Records and Accounts – records All and accounts available for audit purposes to the **Facilities Administration, Design and Construction Division** and/or other appropriate officials. The CONTRACTOR will include, or incorporate by reference, the above provisions in every sub-agreement and will provide that said provisions will be binding upon each subcontractor.
12. Obligation of Funds and Financial Expenditure Summary – All obligations for this Agreement must be made by the CONTRACTOR prior to the termination date and liquidated within sixty (60) days from said termination date.

AGENCY RESPONSIBILITIES

The Agency, in accordance with the general purposes and objectives of this Agreement, will:

1. Provide payment in accordance with this Agreement based upon billings and appropriate support documentation submitted by the CONTRACTOR, within 30 days of receipt of such billings. The **Facilities Administration, Design and Construction Division** shall not be liable for any cost incurred prior to the issuance of this Agreement.
2. Provide such special reporting forms, administrative support services, and/or other assistance to the CONTRACTOR as may be required and detailed in attachments to this Agreement.
3. **The DMB Facilities Administration, Design and Construction Division's Industrial Hygiene Consultant will provide cassette analysis for contractor Permissible Exposure Limit (PEL) and Short Term Exposure Limit (STEL) air monitoring for Facilities Administration, Design and Construction asbestos abatement projects.**

MUTUAL ASSURANCES

1. The parties intend that should any section, clause or part of this contract be found to be invalid, that the invalidity shall not affect the presumed validity of any other section, clause or part of this agreement, nor shall it serve to relieve either party of duties imposed by the remainder of the Agreement.
2. The parties agree that this Agreement and any attachments represent the entire, complete and integrated understanding between them, as regards the specific subject matter herein.
3. Any amendments to this Agreement shall be in writing and accepted by all parties.
4. Both parties agree that this agreement is a Michigan contract and that the laws of Michigan govern it.

CORRESPONDENCE

All correspondence, reports, billings and other communication necessary to the implementation of performance of this Agreement is to be directed as follows:

Terry O'Brien
State of Michigan
Department of Management and Budget
Facilities Administration, Design and Construction Division
Stevens T. Mason Building
1st Floor Mason Bldg., P.O. Box 30026
Lansing, MI 48909

ASBESTOS ABATEMENT SERVICES

A. The **Department of Management and Budget (DMB)** is seeking to establish a blanket (open-order) contract for asbestos removal in **DMB managed facilities**. Scope of work will range from incidental negative pressure glovebag removal to large-scale abatement: generally less than \$25,000 per project. Work will be on an as needed basis and contractor will be expected to respond within 24 hours where necessary.

B. Methods

1. The contractor will be expected to work under the direction of a State of Michigan Contract Compliance Inspector and a **contract Industrial Hygiene Consulting firm**.
2. The contractor will submit Standard Operating Procedures for all-asbestos activities and quality assurance processes.

BIDDER REQUIREMENTS, SUBMITTALS AND PRE-QUALIFICATION

- A. Copies of all citations and warnings from regulating authorities, for past three years
- B. Resumes of on-site project managers
- C. Current equipment list
- D. Standard Operating Procedures for all asbestos removal operations.
- E. Written respiratory protection program.
- F. Provide 24 hours, 7 day phone and pager contact information
- G. Criteria for qualification will be
 - 80% on capability and competency of contractor
 - 20% on cost

1.030 Roles and Responsibilities

1.031 Contractor Staff Roles and Responsibilities – Deleted N/A

1.040 Project Plan

1.041 Project Plan Management - Deleted N/A

1.042 Reports – Deleted N/A

1.050 Acceptance

1.051 Criteria – Deleted N/A

1.052 Final Acceptance – Deleted N/A

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Price List, see Location Specification Sheet(s) (LSS).

Bidders are encouraged to offer quick payment terms (i.e. _____% discount off invoice if paid within _____ days). This information can be noted on the Bidders price proposal (see Attachment A) and/or a separated attachment. This will be a factor considered in our award decision.

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 the expense at the State's current travel reimbursement rates. See www.michigan.gov/dmb for current rates.

1.062 Price Term

Fixed with prospective re-determination at an agreed upon time

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

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period. Requests for price changes shall be RECEIVED IN WRITING AT LEAST 10 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. **The Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the contract is cancelled.**

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted N/A

1.070 Additional Requirements

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract term varies – see LSSs. This contract is anticipated to begin on November 1, 2008 for a term of three years. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under 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.

2.002 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two additional one year periods.

2.003 Legal Effect

Contractor shall show acceptance of the Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the 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.

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work.

2.006 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 the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(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 the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 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.

2.008 Form, Function, & 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.

2.009 Reformation and Severability

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

2.010 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, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, 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.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Management and Budget, Purchasing Operations (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **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 Purchasing Operations for the Contract is:

Lymon C. Hunter, CPPB
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
HunterL@Michigan.gov
517.241.1145

2.022 Contract Compliance Inspector (CCI)

After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations will direct the person named below, or any other person so designated, 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 the Contract as that authority is retained by DMB Purchasing Operations.** The CCI for each location is noted on the LSS and will be included in the Contract:

2.023 Project Manager – Deleted N/A

2.024 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 Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must 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 must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the 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 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
Purchasing Operations
Attention: Lymon C. hunter, CPPB
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

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

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

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 must be or must 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.

2.028 Covenant of Good Faith

Each party must 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.

2.029 Assignments

(a) Neither party may assign the Contract, or 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 the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the 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. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 Permits

Contractor must 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 must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not 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 the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the 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 competitive advantage on the RFP

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and the 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").

2.037 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 the Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables – Deleted N/A

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the 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.

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under the 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.

(b) 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. 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 1.064**.

(c) 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 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

2.045 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.

2.046 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 the Contract.

2.047 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 the 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 the Contract shall constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel – Deleted N/A

2.063 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 must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State’s request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must 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 incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel 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.

2.065 Contractor Identification

Contractor employees must 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.

2.066 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. As

reasonably requested by the State in writing, the Contractor will provide to the State's agents and other Contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. 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 the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return 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.

2.068 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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 the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor shall not delegate any duties under the Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations 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 SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

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 the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the 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 the Contract shall not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.003, 2.060, 2.090, 2.110, 2.120, 2.200, 2.250** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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.

2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the 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 the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. 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. The 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>. 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.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must 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 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted N/A

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction 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 the 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 to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the 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 the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.250** 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 the 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 **Section 2.250** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the 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 the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must 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.

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the 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.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may 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. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the 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.

2.113 Retention of Records

Contractor must 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 according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must 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.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must 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 invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice 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 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the 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 the 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 the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) Deleted – N/A
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the 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, must have, or must 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 the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must 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 must 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 the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the 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 the 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 the financial statements, reports, other information. Since the respective dates or periods covered by the 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.
- (l) All written information furnished to the State by or for the Contractor in connection with the 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 the information not misleading.
- (m) 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 the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the Contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after Contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability – Deleted N/A

2.123 Warranty of Fitness for a Particular Purpose – Deleted N/A

2.124 Warranty of Title – Deleted N/A

2.125 Equipment Warranty – Deleted N/A

2.126 Equipment to be New – Deleted N/A

2.127 Prohibited Products – Deleted N/A

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of the Contract, whether the 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 under the Contract.

All insurance coverage's 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 must be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/dleg.

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

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

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 the 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 according to 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 must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:

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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the 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) must 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.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "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) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must 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.

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

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must 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 the 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.

2.142 Code Indemnification – Deleted N/A

2.143 Employee Indemnification

In any 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 must 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.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must 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 the 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 the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the 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

must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the 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 the 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 has 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; (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 the Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under 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 before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the 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 the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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 may defend the claim in the 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 must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the 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 the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

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

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

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must 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 the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the 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 must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 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

unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must 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. This Section will not preclude Contractor from reducing or stopping Services/Deliverables 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.

2.155 Termination for Criminal Conviction

The State may terminate the 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 related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. 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 the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (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 the 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) 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 must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the 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) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the 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 under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not 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 may assume, at its option, any subcontracts and agreements for services and deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.260** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or 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. If the Contract expires or terminates, 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 24 hours. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145**.

2.172 Contractor Personnel Transition

The Contractor must 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 must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors 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.

2.173 Contractor Information Transition

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 the Contract. The Contractor will provide the State with asset management data generated from the inception of the Contract through the date on which the 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.

2.174 Contractor Software Transition – Deleted N/A

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the 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.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.180**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 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, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State will not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 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 must 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 must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's 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 claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary 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 must 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 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section 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 under **Section 2.190**.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the 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.

2.194 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 must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 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 the Contract or any purchase order resulting from the Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under 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.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must 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 under 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, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after 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.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must 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 must 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>.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, 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.

2.212 Compliance with Laws

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

2.213 Jurisdiction

Any dispute arising from the Contract must 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 the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the 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.

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does 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.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (a) Contractor and its Subcontractors will be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

- (c) Contractor must make the following notifications in writing:
- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
 - (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of the 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 is a material breach of the Contract.

2.233 Bankruptcy

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 the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

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 must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to 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 2.241(a)**, Contractor must 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 must inform the State of the projected actual delivery date.

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

2.242 Service Level Agreements (SLAs) – Deleted N/A

2.243 Liquidated Damages – Deleted N/A

2.244 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 the 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 a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 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 is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will 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 the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/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.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under the Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Deleted – N/A

2.252 Delivery of Deliverables

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 must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing – Deleted N/A

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection 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) Before 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 according to **Section 2.253**.

(d) The State will approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is 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 opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the 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 the breach. Notwithstanding the foregoing, the State cannot 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 the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables – Deleted N/A

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The 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.

2.257 Process for Approval of Physical Deliverables – Deleted N/A

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, “Final Acceptance” of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. 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.

2.260 Ownership

2.261 Ownership of Work Product by State – Deleted N/A

2.262 Vesting of Rights – Deleted N/A

2.263 Rights in Data – Deleted N/A

2.264 Ownership of Materials – Deleted N/A

2.270 State Standards

2.271 Existing Technology Standards – Deleted N/A

2.272 Acceptable Use Policy – Deleted N/A

2.273 Systems Changes – Deleted N/A

2.280 Extended Purchasing

2.281 MIDEAL – Deleted N/A

2.282 State Employee Purchases – Deleted N/A

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy – The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified ‘Energy Star’ products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of the Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials:

For the purposes of this Section, “Hazardous Materials” is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil,

and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material 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 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details [visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html)

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

Article 3 – Bid Process and Evaluation Criteria

3.010 Introduction

3.011 Pre Bid Meetings

A **mandatory** pre-bid meeting will be held on **July 30 2008 at 10:30 a.m. at the Stevens T. Mason Building, 2nd Floor**. The purpose of this meeting will be to discuss with prospective Bidders the work to be performed and to allow them to ask questions arising from their review of the RFP. Representation at the pre-bid meeting may be limited to one person per Bidder, due to limited facilities available. The pre-bid meeting is for information only. Any answers furnished will not be official until verified in writing by Purchasing Operations. Answers that change or substantially clarify the RFP will be affirmed in writing and posted on the website via an addendum. The pre-bid meeting will be the Bidders only opportunity to personally address questions concerning this RFP.

Persons with disabilities, who need mobility, visual, hearing, or other assistance for effective participation at the pre-bid meeting should indicate the needs by contacting the Buyer. All the requests must be received at least seven days before the date of the meeting. Any requests received after July 23, 2008 cannot be guaranteed.

3.012 Communications

The State will not respond to telephone inquiries or visitation by Bidders or their representatives. Bidder's sole point of contact concerning the RFP is the Buyer in the DMB-Purchasing Operations. Any communication outside of this process may result in disqualification and/or debarment.

3.013 Questions

Questions concerning the RFP are to be submitted, in writing, no later than **Friday August 8, at 3:00 PM** on to:

Lymon C. Hunter, CPPB
Department of Management and Budget - Purchasing Operations
Mason Building—2nd Floor
P.O. Box 30026
Lansing, Michigan 48909
(517) 241-1145
HunterL@Michigan.gov

All questions must be submitted in writing and sent as an attachment in Microsoft Word or Rich Text Format (RTF). Changes to the RFP and answers to questions will be prepared as an addendum and posted on the State's web site under the corresponding bid number: www.michigan.gov/buymichiganfirst. The posted addendum officially revises and supercedes the original RFP. The addenda will be posted approximately Wednesday, August 20, 2008.

3.020 Award Process

3.021 Method of Evaluation

Joint Evaluation Committee Proposal Evaluation

In awarding this Contract, proposals will be evaluated by a Joint Evaluation Committee (chaired by DMB Purchasing Operations).

3.022 Evaluation Criteria

TECHNICAL EVALUATION SCORING

The following represents the scoring of the particular factors and criteria used to evaluate a vendor and determine the recommendation for final award(s):

STEP 01: TECHNICAL EVALUATION CRITERIA

- Bidders will be evaluated based on their proposed approach to meeting the detailed Asbestos Abatement Service specifications identified in STEP 2 (i.e., Work Plan).

STEP 02: TECHNICAL EVALUATION CRITERIA

- Bidders that complete and pass STEP 1 and achieve a **minimum score of 80 points** in STEP 2 will be placed on a “**Pre-Qualified Bidder Pool for Region**” and be eligible to submit proposals for any Contracts that expire between 11/01/08 and 11/01/11 subject to submitting Article 3. Agencies may utilize the pre-qualified Bidder pool for Contractors handled under their delegated authority.
- Bidder is to prepare (as part of its regional proposal), the company/organization’s approach to meeting the State’s specifications in response to the Location Specification Sheet (LSS) with a complete work plan. Responses should follow the outline below. The following chart represents the scoring of the particular factors.
Bidders that complete and pass STEP 1 and achieve a **minimum score of 80**

INTRODUCTION & COMPANY INFORMATION		WEIGHT
1.	Company Information, And Capabilities	10
2.	Company's Prior Experience, and References	60
3.	Staff Training & Development; Health Safety & Environmental Protection	20
4.	Quality Assurance, Control Plan, and Customer Service	10
TOTAL		100 points possible

Presentation

Bidders who submit proposals may be required to make oral presentations of their proposals to the State. These presentations provide an opportunity for the Bidders to clarify the proposals through mutual understanding. Purchasing Operations will schedule these presentations, if required.

Site Visit

The State may conduct a site visit to tour and inspect the Bidder’s facilities. Purchasing Operations will schedule these visits if required.

3.023 Price Evaluation

(a) Only those proposals receiving a score of 80 points or more of the total maximum possible score will be considered for award.

(b) All price proposals will be opened. However, prices will only be evaluated from those Bidders meeting the minimum point threshold.

3.024 Award Recommendation

The award recommendation will be made to the responsive and responsible Bidder who offers the best value to the State of Michigan. Best value will be determined by the Bidder meeting the minimum point threshold and offering the lowest price, as demonstrated by its proposal.

3.025 Reservations

(a) The State reserves the right to consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.).

(b) The State reserves the right to award by item, part or portion of an item, group of items or total proposal, to reject any and all proposals in whole or in part, if, in the Director of Purchasing Operations’ judgment, the best interest of the State will be so served.

(c) The State reserves the right to award multiple, optional use contracts. In addition to the other factors listed, offers will be evaluated on the basis of advantages and disadvantages to the State that may result from making more than one award.

3.026 Award Decision

Award recommendation will be made to the Director of Purchasing Operations.

3.027 Protests

If a Bidder wishes to initiate a protest of the award recommendation, the Bidder must submit a protest, in writing, by 5:00 p.m. on the date stated on the notice of recommendation to award. Bidder must include the RFP number and clearly state the facts believed to constitute error in the award recommendation along with the desired remedy. More information about the Bidder protest process is available at www.michigan.gov/buymichiganfirst; click on the "Vendor Information" link.

3.028 State Administrative Board

The State Administrative Board (ADB) must approve all contracts/purchase orders in excess of \$25,000. The decision of this Board regarding the recommendation is final; however, ADB approval does not constitute a Contract. The award process is not completed until the Bidder receives a properly executed Contract or Purchase Order from DMB Purchasing Operations.

3.030 Laws Applicable to Award

3.031 Reciprocal Preference

Public Act 431 of 1984 allows that if the low bid for a state procurement exceeds \$100,000.00 and is from a business located in a state which applies a preference law against out-of-state businesses, the department shall prefer a bid from a Michigan business in the same manner in which the out-of-state Bidder would be preferred in its home state.

3.032 Qualified Disabled Veteran Preference – Deleted N/A

3.033 Independent Price Determination

- (a) By submission of a proposal, the Bidder certifies, and in the case of a joint proposal, each party certifies as to its own organization, that in connection with this proposal:
- (i) The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to the prices with any other Bidder or with any competitor; and
 - (ii) Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder before award directly or indirectly to any other Bidder or to any competitor; and
 - (iii) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
- (b) Each person signing the proposal certifies that the person:
- (i) Is responsible for the prices offered in the proposal and has not participated (and will not participate) in any action contrary to (a) i, ii, and iii. above; or
 - (ii) Is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for the decision in certifying that the persons have not participated (and will not participate) in any action contrary to (a) (i), (ii), and (iii) above.

3.034 Taxes

The State may refuse to award a Contract to any Bidder who has failed to pay any applicable State taxes. The State may refuse to accept Bidder's bid, if Bidder has any outstanding debt with the State.

3.040 Possible Additional Considerations/Processes

3.041 Clarifications

The State may request clarifications from one or all Bidders. The State will document, in writing, clarifications being requested and forward to the Bidders affected. This process does not allow for changes. Instead, it provides an opportunity to clarify the proposal submitted.

If it is determined that a Bidder purposely or willfully submitted false information, the Bidder will not be considered for award, the State will pursue debarment of the Bidder, and any resulting Contract that may have been established will be terminated.

3.042 Past Performance

The State may evaluate the Bidder's prior performance with the State, and the prior performance information may be a factor in the award decision.

3.043 Financial Stability

In making an award decision, the State may evaluate the financial stability of any Bidder. The State may seek financial information from the Bidder and from third parties. If the State determines in its sole discretion that contracting with a Bidder presents an unacceptable risk to the State, the State reserves the right to not award a Contract to that Bidder.

3.044 Samples/Models – Deleted N/A

3.045 Energy Efficiency/Environmental Purchasing Policy

The State seeks wherever possible to purchase energy efficient products. This may include giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State will include energy efficiency as one of the priority factors to consider when choosing among comparable bids.

The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. This can be best accomplished by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that may be considered in Best Value Purchasing evaluation include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

3.046 Pricing Negotiations

The State may enter into negotiations with Bidders on price or technical clarifications. No modification to the RFP technical requirements or specifications will be allowed. If technical requirement or specification changes are required, which cannot be resolved via technical clarification, the BAFO process as described below may be used.

3.047 Best and Final Offer (BAFO)

If the selection process described in the RFP does not lead to a viable award recommendation, or significant deficiencies are identified, the Buyer and/or the JEC (Joint Evaluation Committee), at their discretion, may prepare a Deficiency Report and Clarification Request (DR/CR) for each proposal determined to be in the competitive range. Bidders will be allowed to respond in writing to the (DR/CR) with a Best and Final Offer (BAFO). The BAFO may include any changes to the original proposal to address the listed deficiencies, including alterations to the original cost proposal to address correction of the deficiencies. The BAFO's must be submitted by the deadline established by Purchasing Operations.

After reviewing the Best and Final Offers, the Buyer and/or the JEC will re-evaluate the proposals using the original evaluation method. If an alteration to the originally published evaluation criteria is to be made, the changes in the criteria will be published to all Bidders as part of the issuance of the DR/CR's.

Bidders are cautioned to propose the best possible offer at the outset of the process, as there is no guarantee that any Bidder will be allowed an opportunity to submit a Best and Final Offer.

3.050 Proposal Details

3.051 Complete Proposal

To be considered, each Bidder must submit a COMPLETE proposal in response to this RFP, using the format specified. No other distribution of proposals is to be made by the Bidder. **BIDDERS MUST COMPLETE, SIGN, AND RETURN FORM DMB 285 THAT PERTAINS TO THIS RFP, WITH THEIR PROPOSAL.** The proposal must state how long it remains valid. This period must be at least 120 days from the due date for responses to this RFP.

3.052 Efficient Proposal

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Bidder's ability to meet the requirements of the RFP. Fancy bindings, colored displays, promotional material, etc., will receive no evaluation credit. Emphasis should be on completeness and clarity of content in the format specified.

3.053 Price and Notations

Prices and notations must be typed or in ink. Prices must be for new items only unless specified otherwise in the RFP. The person signing the proposal should initial any form of pricing corrections made to the proposal by the Bidder before submission in **ink**. In the event of un-initialed pricing corrections, the Buyer, with management approval, may require an affidavit from the Bidder confirming the price correction was made before the bid submission.

3.054 Double Sided on Recycled Paper

Bidders, when possible, should use recycled paper for all printed and photocopied documents related to the submission of their bid and fulfillment of any resulting Contract and must, whenever practicable, use both sides of the paper and ensure that the cover page of each document bears an imprint identifying it as recycled paper.

3.055 Proposal Format

The following information must be included in all proposals. Bidders must respond to all sections of the RFP. Failure to respond to every section in each Article could result in disqualification from the bidding process. Proposals should be formatted to include each of the following sections, which should be clearly identified using the same format as the RFP is written in and with the appropriate headings:

Article 1 – Statement of Work – Bidder must respond to each section. **Proposal must include detailed responses to all tasks as requested in Article 1. Bidders must copy these sections, and provide Bidder's response in the area specified for "Bidder Response to Task". This area has been designed to expand as necessary. A Microsoft version of this document is available by emailing a request to the Buyer listed on the cover page of this document.**

Article 2 – Terms and Conditions – Bidder must include a statement agreeing to the Terms and Conditions contained in this Article

Article 4 – Certifications and Representations – Bidder must respond to each section

Article 5 – Evaluation Information – Bidder must respond to each section

3.060 Submitting Bids and Proposals

3.061 Sealed Bid Receipt

SEALED BIDS (PROPOSALS) MUST BE RECEIVED AND TIME-STAMPED IN PURCHASING OPERATIONS ON OR BEFORE 3PM ON THE DUE DATE SPECIFIED ON THE COVER PAGE OF THIS RFP. BIDDERS ARE RESPONSIBLE FOR SUBMITTING THEIR PROPOSALS TO PURCHASING OPERATIONS ON TIME. PROPOSALS THAT ARE RECEIVED AFTER THE SPECIFIED DUE DATE AND TIME CANNOT BE CONSIDERED UNLESS (a) ALL OTHER BIDS RECEIVED ON TIME DO NOT MEET SPECIFICATIONS, OR (B) NO OTHER BIDS ARE RECEIVED.

3.062 Proposal Submission

Submit **five** written copies (including one clearly marked original) of Bidder's proposal according to the following instructions.

Your proposal should also be submitted in electronic format on a 3 1/2" floppy disk or CD-ROM. All documents and data must be created using tools that are compatible with the Microsoft Office standard desktop tools, without need for conversion. The electronic format may be saved in a compressed format.

Bidders should submit in electronic format along with the number of paper copies being requested. Any items contained in the Proposal that cannot be saved in the aforementioned format should be clearly identified by the Bidder as the items that are excluded from the electronic submission.

Submit with your proposal FORM DMB-285. PROPERLY COMPLETE AND SIGN THAT FORM AND INSERT IT IN YOUR PROPOSAL BEFORE SUBMITTAL.

3.063 Responses

(a) Each envelope/container submitted must contain the response to only one RFP. Do not submit responses to more than one RFP in one envelope/container. Also, faxed bids will not be accepted unless specifically requested in writing by Purchasing Operations.

(b) BIDDERS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE ENVELOPE: The RFP Number; the Due Date; Bidder Name and the Bidder Identification Number (FEIN – do not write on outside of envelope if FEIN is social security number). If a delivery service is used which prohibits the markings on their envelope or package, this information must be placed on the outside of an interior envelope or package.

(c) The bid may be submitted utilizing one of the methods below:

1. Bids may be delivered to the receptionist desk of DMB, Purchasing Operations on the 2nd Floor of the Mason Building. Bidders must allow adequate time to check in at the security desk on the 1st Floor of the Mason Building before bid submission deadline.
2. Purchasing Operations address for proposals submitted by CONTRACT CARRIER, COURIER DELIVERY, or PERSONAL DELIVERY, is:

State of Michigan
Department of Management and Budget
Purchasing Operations
2nd Floor, Mason Building
530 West Allegan Street
Lansing, Michigan 48933

3. Proposals submitted through the US. POSTAL SERVICE should be addressed as follows:

State of Michigan
Department of Management and Budget
Purchasing Operations
Post Office Box #30026
Lansing, Michigan 48909

3.070 Possible Bond Requirements

3.071 Bid Bond – Deleted N/A

3.072 Performance Bond – Deleted N/A

3.073 Payment Bond – Deleted N/A

3.074 Maintenance Bond – Deleted N/A

Article 4 – Certifications and Representations

Bidder must complete this entire section and submit with their bid or proposal, unless you have completed Article 4, Certifications and Representations, and submitted it in response to an RFP within the last year to DMB Purchasing Operations. If you submitted this information within the last year, you need only to provide the following information relative to Article 4 for this RFP:

Date Submitted _____ RFP # _____.

Failure or refusal to submit any of the information requested in this section may result in the Bidder being considered non-responsive and therefore ineligible for award consideration. The State may also pursue debarment of a Bidder that fails or refuses to submit any of the requested information.

Response to sections **4.010 through 4.044** may be used in evaluating Bidder’s response.

Responses to sections **4.050 through 4.059** are for statistical and informational purposes only and will not be used in evaluating Bidder’s response.

4.010 Introduction

4.011 Bidder Identification

Bidder Name: _____

() Federal ID Number: _____ (TIN, if using social security number for TIN, do not provide in this document)

() DUNS Number: _____
Bidder is not required to have a DUNS number, but if Bidder does have one it must be listed.

4.020 Representations

4.021 Tax Payment

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

_____ (Initial)

4.022 Forced Labor, Convict Labor, or Indentured Servitude Made Materials

Bidder represents and certifies that, to the best of its knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, will be furnished to the State under any resulting Contract, that have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

_____ (Initial)

4.023 Certification of Compliance with Credit Card Regulations – Deleted N/A

4.030 Disclosures

4.031 Bidder Compliance with State and Federal Law & Debarment

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

Has _____ Has Not _____ been convicted of a criminal offense incident to the application for or performance of a State Contract or subcontract;

Has _____ Has Not _____ been convicted of any offense which negatively reflects on the Bidder’s business integrity, including, but not limited to: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and state or federal antitrust statutes;

Has _____ Has Not _____ been convicted of any other offense, violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the State, indicates that the Bidder is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on state projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;

Has _____ Has Not _____ failed to substantially perform a State Contract or subcontract according to its terms, conditions, and specifications within specified time limits;

Has _____ Has Not _____ violated State bid solicitation procedures or violated the terms of a solicitation after bid submission;

Has _____ Has Not _____ refused to provide information or documents required by a Contract including, but not limited to information or document necessary for monitoring Contract performance;

Has _____ Has Not _____ failed to respond to requests for information regarding Bidder's performance, or accumulated repeated substantiated complaints regarding performance of a Contract/purchase order; and

Has _____ Has Not _____ failed to perform a State Contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

(b) For purposes of this Section, "Principals" means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity. The Bidder certifies and represents, to the best of his knowledge that the supplier and/or any of its Principals:

Are _____ Are Not _____ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any state or federal agency;

Has _____ Has Not _____ not with in a three-year period preceding this RFP, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.

Are _____ Are Not _____ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, the commission of the any of the offenses enumerated in Section 4.031(a) of this RFP.

Has _____ Has Not _____ within a three-year period preceding this solicitation had one or more purchases terminated for default by any state or federal agency.

(c) The Bidder must provide immediate written notice to the State if, at any time before the purchase award, the Bidder learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances.

(d) A certification that the Bidder or its Subcontractors is presently debarred, suspended, proposed for debarment or declared ineligible for award of a purchase by any state or federal agency will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the Bidder's responsibility. Failure to furnish the certification or provide the information as requested by the State may render the Bidder response non-responsive.

(e) Nothing contained in this Section must be construed to require establishment of a system of records to render, in good faith, the certification required in this Section. The knowledge and information of a Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.

(f) If it is later determined that the Bidder knowingly rendered an erroneous certification under this Section, in addition to the other remedies available to the State, the State may terminate any resulting Contract for default.

BIDDER MAY REVIEW THE STATE'S DEBARMENT POLICY AT: www.michigan.gov/buymichiganfirst (click on the link to "Selling to the State," Followed by "Vendor Information" to find the Debarment Policy)

4.032 Ethics: Gratuities and Influence

Gratuities

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

Bidder Has _____ Has Not _____ given or offered to give a gratuity, kickback, money, gift, or any thing of value to a State official, officer, or employee intended to effectuate the awarding of a Contract or favorable treatment under a Contract.

Influence

The Bidder, by signing its bid, certifies to best of its knowledge that no funds or other items/services of value have been given to any State officer, official, or employee for influencing or attempting to influence the officer, official, or employee to obtain a Contract or favorable treatment under a Contract.

_____ (Initial)

4.033 RFP Preparation

Bidder must notify the State in its bid proposal, if it or any of its Subcontractors, or their officers, directors, or key personnel have assisted with the drafting of this RFP, either in whole or in part. This includes the conducting or drafting of surveys designed to establish a system inventory, and/or arrive at an estimate for the value of the solicitation.

Bidder hereby certifies that it HAS _____, HAS NOT _____ assisted in the development of this RFP.

Except for materials provided to all Bidders as part of this RFP, Bidder must provide a listing of all materials provided by the State to the Bidder containing information relevant to this RFP, including, but not limited to: questionnaires, requirements lists, budgetary figures, assessments, white papers, presentations, RFP draft documents. Bidder must provide a list of all State employees with whom any of its personnel, and/or Subcontractors' personnel has discussed the RFP after the issuance date of the RFP.

4.034 Environmental Awareness

Clean Air and Water:

Bidder certifies that any facility to be used in the performance of any resulting Contract:

IS _____, IS NOT _____ listed on the Environmental Protection Agency (EPA) List of Violating Facilities.

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

_____ (Initial)

Emergency Planning and Community Right-to-Know Reporting:

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

_____ (Initial)

4.035 Knowledge of Child Labor for Listed End Products

- (a) "Forced or indentured child labor" means all work or service:
 - (i) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
 - (ii) Performed by any person under the age of 18 under a Contract the enforcement of which can be accomplished by process or penalties.

(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Country of Origin

(c) *Certification.* The State will not make award to a Bidder unless the Bidder, by checking the appropriate block, certifies to one of the following:

- () The Bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.
- () The Bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The Bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture the end product. On the basis of those efforts, the Bidder certifies that it is not aware of any the use of child labor.

_____ (Initial)

4.036 Use of Other Sources as Subcontractors

(a) Persons with disabilities
Bidder IS ____ IS NOT ____ purchasing supplies and/or service from a business owned by persons with disabilities in the performance of any resulting Contract.

Bidder has contracted for _____% of supplies and services needed for the performance of any resulting Contract, which equals \$_____ from a business owned by persons with disabilities (estimates or approximates are acceptable).

Business (es) Name: _____

(b) Community Rehabilitation Organizations
Bidder IS ____ IS NOT ____ purchasing supplies and/or service from a community rehabilitation organization in the performance of any resulting Contract.

Bidder has contracted for _____% of supplies and services needed for the performance of any resulting Contract, which equals \$_____ from a community rehabilitation organization (estimates or approximates are acceptable).

Community Rehabilitation Organization Name: _____

4.037 Domestic End Product

“Domestic end product” means one that is manufactured within the United States and the cost of the domestic components exceeds 50% of the cost of all the components.

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

Excluded End Products	Country of Origin

_____ (Initial)

4.038 Services Needed in Performance

Bidder certifies that services to be purchased to enable Bidder to perform any resulting Contract will be purchased from a business having its principle place of business in the State, **except those listed below** (use additional attachment if necessary; estimates are acceptable):

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

4.040 Bidder Information

4.041 Expatriated Business Entity

“Expatriated business entity” means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation’s stock.

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

Bidder certifies that it IS _____, IS NOT _____ an expatriated business entity located in a tax haven country.

Bidder certifies that it IS _____, IS NOT _____ an affiliate of an expatriated business located in a tax haven country.

4.042 Business Owned by Qualified Disabled Veteran

“Qualified Disabled Veteran,” as defined by Public Act 91, means a business entity that is at least 51% owned by one or more veterans who are U.S. citizens with a service-connected disability.

Public Act 91 defines “Service-Connected Disability” as a disability incurred or aggravated in the line of active military, naval, or air service as defined in 38 USC 101 (16).

The Bidder represents that it IS _____, IS NOT _____ a disabled Veteran-owned business.

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

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

4.043 Community Rehabilitation Organization

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

The Bidder represents that it IS _____, IS NOT _____ a community rehabilitation organization.

4.044 Certification of a Michigan Business

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

() Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan under the Michigan Single Business Tax Act, 1975 PA 228, MCL §§ 208.1 – 208.145; or

() Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or

() Withheld Michigan income tax from compensation paid to the Bidder’s owners and remitted the tax to the Department of Treasury

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

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

Authorized Agent Signature

Authorized Agent Name (print or type)

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN \$25,000.

Bidder must also indicate one of the following:

Bidder qualifies as a Michigan business (provide zip code: _____)

Bidder does not qualify as a Michigan business (provide name of State: _____)

Principle place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: _____)

4.050 Additional Information

4.051 Utilization of Business Concerns

It is the policy of the State that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, and small disadvantaged business concerns, must have the maximum practicable opportunity to participate in performing State Contracts, including Contracts and Subcontracts for subsystems, assemblies, components, and related services for major systems.

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

_____ (Initial)

4.052 Owners and Officers

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

Name and Title	% of Interest or Ownership

_____ (Initial)

4.053 Subcontractors

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

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

4.054 Former State Employees

Bidder certifies that there ARE _____ ARE NOT _____ former state employees involved in the performance of any resulting Contract.

If former state employees are involved in the performance of any resulting Contract, Bidder must provide the following information:

Bidder represents that the following employees involved in the performance of any resulting Contract are former State employees (use attachment if necessary).

Name	Department, Division	Date of Employment

_____ (Initial)

4.055 Employee and Subcontractor Citizenship

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

Employee Name	Title

4.056 Affirmative Action Program

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

4.057 Small Business Representation

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

Provide the following information:

_____ (Estimate # of employees)

\$_____ (Estimate of annual revenue)

4.058 Women, Minority, or Veteran-Owned Business Representation

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

The Bidder represents that it IS _____, IS NOT _____ a women-owned business.

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

The Bidder represents that it IS _____, IS NOT _____ a minority-owned business.

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

The Bidder represents that it IS _____, IS NOT _____ a veteran-owned business.

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

4.059 Business Owned by Persons with Disabilities

“Business owned by persons with disabilities” means a business in which all of the following apply:

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

The Bidder represents that it IS _____ IS NOT _____ a business owned by persons with disabilities.

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

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

Certification and Assurances

I/We make the above certifications and assurances as a required element of the solicitation document to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements and all requirements of the Request for Proposal (RFP) are conditions precedent to the award or continuation of the related Agreement(s).

Name of Bidder/Contractor/Supplier

Address of Contractor/Supplier

Telephone and Fax No. of Contractor/Supplier

Signature of Contractor/Supplier’s Authorized Representative

Title of Supplier Representative

Date

Article 5 – Required Bidder Information

Bidders must provide the following required information. Failure respond to each requirement may disqualify the Bidder from further participation in this RFP.

5.010 Bidder Information

5.011 Company Information

State the full name and address of your organization and, if applicable, the branch office or other subordinate elements that will perform, or assist in performing, the work. Indicate whether it operates as an individual, partnership, or corporation; if as a corporation, include the State in which it is incorporated. If applicable, state whether it is licensed or registered to operate in the State of Michigan.

Bidder Response:

Name:					
Address:					
City, State, Zip:					
Phone:	()				
Web Page:					
Legal Status:					
Business Structure:					
How long in business:					
Sales volumes for the last five years (2008 first):					
Location(s) of facilities that will be involved in servicing the Contract:					

Name, title, address, email, phone and fax numbers for Bidder's RFP Contact.

Bidder Response:

Name: _____
Address: _____
City, State, Zip _____
Phone: () _____
Fax: () _____
E-Mail _____

Note: Person named above will be sole contact for your company to receive the Contract. Include the name and telephone number of person(s) in your company authorized to expedite any proposed Contract with the State.

Background Information:

Provide the following information: Year Company /Organization was established; Identify whether your company/organization operates as an individual, partnership, or corporation (if a corporation, include the state in which it is incorporated); Is your company / organization a subsidiary of another company / organization - If yes, information should be included for both parent and subsidiary; Current Number of Company Employees; Retention Rate of employees over the past three years; and Provide evidence of your financial strength - include recent annual reports, income statement, balance statement, and/or equivalent information (independent statement of net worth).

Bidder Response:

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5.012 Prior Experience

Indicate the prior experience of your firm, which you consider relevant to your ability to successfully manage a Contract for the services defined by this RFP. Include sufficient detail to demonstrate the relevance of this experience. Proposals submitted should include, in this section, descriptions of a minimum of three qualifying relevant experiences to include project/client descriptions, costs, and starting and completion dates of projects/contracts successfully completed. Also, include the name, address, and phone number of the responsible official of the customer organization who may be contacted.

Bidder Response:

5.013 Staffing

The written proposal should indicate the competence of personnel whom the Bidder intends to assign to the project. Provide information for staff training and development on the following:

- **Pre-Employment Requirements:** Provide information about your company’s requirements before hiring employees (i.e. GED/High School Diploma needed, certain operator’s license(s), past experience, background checks, drug screening, etc);
- **Before Job Placement:** Explain the type of training that is provided to the employees prior to placing them on the job assignment;
- **On the Job Training (OJT):** Provide the duration of the training, what the training consists of, the credentials/qualifications of the instructor, etc.;
- **On-Going Training:** Provide any on-going training that your company provides to employees; (i.e. weekly, quarterly, semi-annual training, attendance to seminars, certifications held, etc); and
- **Health, Safety, & Environmental Protection:** Include complete description of company’s Health, Safety, and Environmental Protection program and/or describe process for making employees aware of safety issues and procedures.

Bidder Response:

Bidder must provide a list of all Subcontractors, including firm name, address, contact person, and a complete description of the work to be Contracted. Include descriptive information concerning Subcontractor’s organization and abilities.

Bidder Response:

5.014 Past Performance

Please list any Contracts that you have had with the State in the last three years.

Bidder Response:

5.015 Contract Performance

Indicate if the Bidder has had a Contract terminated for default in the last three years. Termination for default is defined as notice to stop performance which was delivered to the Bidder due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and determined that the Bidder was in default. If the Bidder has not had a Contract terminated for default, the Bidder must affirmatively state this under "Reason" below.

If no the terminations exist, the Bidder must affirmatively state this.

Note: If the Bidder has had a Contract terminated for default in this period, the Bidder must submit full details including the other party's name, address, and phone number Purchasing Operations will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past experience.

Termination: _____

Reason: _____

5.016 Place of Performance

Bidders, in the performance of any resulting Contract, must state if they intend to use one or more plants or facilities located at a different address from the address indicated in section 5.011. The following information must be provided for these plants or facilities:

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

5.017 Disclosure of Litigation

Bidder must disclose any material criminal litigation, investigations or proceedings involving the Bidder (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Bidder (and each Subcontractor) must disclose to the State any material civil litigation, arbitration or proceeding to which Bidder (or, to the extent Bidder is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Bidder or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Bidder or, to the extent Bidder is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement in Bidder's bid response. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Bidder's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

Bidder Response:

5.018 Quality Assurance / Customer Service

Bidders must describe their Quality Assurance and Customer Service program(s). Provide information to the following:

- **Quality Assurance:** Bidders must describe how it verifies that staff adequately performs work for delivery of the service(s) described under this RFP. Also, include who within your company inspects, approves and verifies delivery of service(s) and how corrective actions with staff are implemented;
- **Customer's Security:** Bidders must describe a plan for overall customer security (i.e., employee background checks, etc.), as well as describe a specific plan for key-control and Contractor access to customer location(s); and
- **Customer Service:** Bidders must describe a process for responding to customer complaints and verifying customer satisfaction and acceptance of service delivery.

Bidder Response:

5.019 Location Work Plan

Bidders must describe a plan for providing service(s), to each location being bid on, that explains:

- A Transition, Implementation, and Contingency plan.
 - Transition – Describe the plan for overtaking service(s) from current Contractor to your company. If Bidder is current Contractor, so indicate.
 - Implementation – Describe how you plan to provide the service(s) without disrupting the current service level(s). If Bidder is current Contractor, so indicate.
 - Contingency – Describe your plan to still provide the service(s) due to any unforeseen circumstance (i.e. staff no show, equipment failure, etc.).
- Number of staff needed to provide service, with estimated man-hours needed to perform the service; and level of supervision/inspection processes for work to be delivered by staff.
- List of equipment (see table on LSS) that will be needed/utilized for the service(s).
- All supplies that will be needed/utilized for the service(s), with all required information (Material Safety Data Sheets, etc).

Bidder Response:

5.020 MIDEAL - Extended Purchasing – Deleted N/A