



**STATE OF MICHIGAN**  
**Department of Energy, Labor & Economic Growth**  
**Purchasing**

Invitation to Bid No. 641IOFIR-Actuary Expert  
Expert Witness Actuarial Services

Buyer Name: Shay Gaffey  
Telephone Number: 517 335-1971  
E-Mail Address: Gaffeys@michigan.gov

**Estimated Timeline:**

<b>Key Milestone:</b>	<b>Date:</b>
Issue Date	4/10/2009
Pre-Bid Meeting/Site Visit	N/A
Questions Due	4/15/2009
Bid Due Date	4/20/2009
Award Date	4/23/2009
Contract Start Date	4/27/2009

**Checklist for Proposal Contents and Responsiveness:**

This checklist is provided to assist bidders in preparing a proposal. Questions must be forwarded to the assigned DMB Buyer listed on the cover-page of this document.

- Entire PROPOSAL (package) submitted by the required due-date and time**, per the schedule of this ITB, with one printed, signed original, the five (5) additional printed copies [six (6) binders total], *and* one electronic copy, on CD-ROM, for the original and each copy.

**PROPOSAL PACKAGE MUST INCLUDE:**

- COVER LETTER**, signed by the Company's authorized representative, which states that:
- Proposal offer is valid through October 31, 2010.
  - Company agrees to meet all required timeframes described in Articles 1 and 2 of the ITB.
  - Company acknowledges that a Certificate of Insurance will be provided as a condition of award (as required by Article 2 of this ITB).
  - Company agrees to abide by all other terms and conditions as listed in Articles 1 and 2 of the ITB.
- TECHNICAL PROPOSAL**, submitted on the Technical Proposal-form attached to this ITB, which includes the required information for the State's evaluation of bidder's capabilities:

Bidding Company's:

- (1) Information and Capabilities, including:
  - a. Financial stability and viability
  - b. Experience
    - i. References
    - ii. Past Performance with the State of Michigan
    - iii. Technical Experience
  - c. Additional Information related to stability
  - d. Additional Information related to capabilities
- (2) Proposed Staffing for Project(s)
- (3) Sub-Contractor Availability for Project(s)
- (4) Equipment Availability for Project(s)

- CERTIFICATIONS & REPRESENTATIONS:**

**Article 3 of this ITB:** (Complete all items contained in Article 3, *Certifications and Representations*, initialing each paragraph requiring an initialed response, acknowledging each certification & representation, and providing all required information.)



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Attachment:

Attachment A: Item Listing/Pricing Page



## **Article1 – Statement of Work (SOW)**

### **1.0 Introduction**

#### **1.001 DEFINING DOCUMENT**

This is an Invitation-To-Bid (ITB). This is a formal request to prospective vendors to submit a proposal and price quotation(s) for competitive evaluation. This document defines and includes the requirements, the specifications and scope of work, and all contractual terms and conditions, which would be included for recommendation of a possible contract award. Final award recommendation will depend upon which vendor represents the best overall value for the State.

#### **1.002 PROJECT TITLE AND DESCRIPTION**

The purpose of this ITB is to establish a Contract to provide as needed actuarial expert testimony in administrative or court hearings in personal automobile and homeowner's insurance rate-making issues. Article 1 is designed to provide bidders with information on requirements associated with this ITB.

At this time, there is no accurate system to gauge the amount of administrative hearings that will be scheduled. Hearings are expected to be scheduled in one month blocks; one to four days duration for each hearing. All hearings will be held in Lansing, Michigan, during normal business hours, Monday through Friday, from 8:00 a.m. to 5:00 p.m.

Article 1 - SOW will be used by the State for the evaluation process. Bidders will be submitting written proposals discussing how they meet the below specific requirements.

If any part of the Specific Requirements appears to be excessive, with respect to the overall outcome desired by the State, please notify the Buyer in writing for consideration of a possible change to the requirements (see 3.001).

#### **Background Information:**

On February 3, 2009, Governor Granholm issued Executive Directive 2009-1 that directed the Office of Financial and Insurance Regulation (OFIR) to utilize every administrative tool at the agency's disposal to assure that the auto insurance company provides insurance at fair and equitable rates, including, but not limited to disapproval of rate increases or rejection of rate filings. To read the entire Executive Directive, visit: <http://www.michigan.gov/gov/0,1607,7-168-36898-208124--,00.html>

OFIR has determined that premiums developed using insurance credit scoring are unfairly discriminatory and do not meet the requirements of Michigan's Insurance Code. For more information about OFIR and read the press release, visit the OFIR Website: <http://www.michigan.gov/dleg/0,1607,7-154-10555--,00.html>

The purpose of this Invitation to Bid is to solicit and obtain proposals from vendors qualified to provide actuarial expert testimony in administrative or court hearings in personal automobile and homeowner's insurance rate-making matters.

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

- Testify in person or by written submission in administrative or court hearings and assist in creating and explaining exhibits in connection with the testimony.
- Attend public meetings and administrative hearings to explain personal auto insurance matters.

#### **1.003 PROJECT CONTROL**

Project Control



- a. The Contractor will carry out this project under the direction and control of the OFIR, Office of General Counsel.
- b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet *monthly* as a minimum, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.

#### **1.004 COMMENCEMENT OF WORK**

Contractor shall show acceptance of this agreement by signing two (2) copies of this Contract and returning it to the Contract Administrator. Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

#### **1.1 RESERVED**

**1.101 RESERVED**

**1.102 RESERVED**

**1.103 RESERVED**

**1.104 RESERVED**

#### **1.2 Service Capabilities**

**1.201 RESERVED**

**1.202 RESERVED**

**1.203 REPORTING**

Bidders shall discuss their capabilities related to generating reports. Contractor shall be able to provide various reports, when requested by the State. Examples include itemized report of total services purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

**1.204 RESERVED**

**1.205 RESERVED**

#### **1.3 RESERVED**

**1.301 RESERVED**

**1.302 RESERVED**

**1.303 RESERVED**



**1.304 RESERVED**

**1.305 RESERVED**

**1.306 RESERVED**

**1.4 Project Price**

**1.401 PROPOSAL PRICING**

Vendor's proposal shall include a cost proposal providing a flat hourly rate. The rate must incorporate any direct or indirect costs, including travel. The state will not reimburse travel time or expenses (see Attachment A, Pricing).

**1.402 QUICK PAYMENT TERMS**

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process. Bidders shall discuss quick payment terms that they are offering to the State (i.e. \_\_\_\_\_% discount off invoice if paid within \_\_\_\_\_ days). This may be a factor considered in our award decision.

**1.403 PRICE TERM**

Prices quoted are firm for the entire length of the Contract.

**1.5 Quantity term**

Bidder agrees to supply all that the state requires

**1.6 Other Terms and Conditions Needed for this Contract**



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

The Contract is for services of an actuary qualified to provide expert testimony in personal automobile and homeowner's insurance rate-making issues for the State of Michigan, Department of Energy, Labor & Economic Growth, Office of Financial & Insurance Regulation. Bids are due and will be publicly identified at the time noted on the Invitation To Bid (ITB) Form.

#### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Energy, Labor & Economic Growth, hereinafter known as Purchasing and Grant Services, for the Office of Financial and Insurance Regulation, hereinafter known as OFIR. Where actions are a combination of those of Purchasing and the State agencies, the authority will be known as the State.

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

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

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

Department of Energy, Labor & Economic Growth  
Purchasing and Grant Services  
Attn: Shay Gaffey  
4<sup>th</sup> Floor, Ottawa Building  
P.O. Box 30004  
Lansing, Michigan 48909  
Phone (517) 335-1971  
Email [gaffey@michigan.gov](mailto:gaffey@michigan.gov)

#### 2.003 NOTICE

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

#### 2.004 CONTRACT TERM

The term of this Contract will commence with the issuance of a Contract. This will be approximately April 27, 2009 through April 26, 2010...

**Option.** The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing and Grant Services to exercise an option year.

**Extension.** At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are



some of the criteria that will be used as a basis for any decision by Purchasing and Grant Services to exercise an option year.

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

## **2.005 GOVERNING LAW**

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

## **2.006 APPLICABLE STATUTES**

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

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

MI OSHA MCL §§ 408.1001 – 408.1094

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

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

MI Consumer Protection Act MCL §§ 445.901 – 445.922

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

Department of Civil Service Rules and regulations

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

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

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

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

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

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

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

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

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

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

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

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

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

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

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

Sherman Act, 15 U.S.C.S. § 1 et seq.

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

Clayton Act, 15 U.S.C.S. § 14 et seq.

The Insurance Code MCL §§ 500.100 et seq.

## **2.007 RELATIONSHIP OF THE PARTIES**

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

**2.008 HEADINGS**

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

**2.009 MERGER**

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

**2.010 SEVERABILITY**

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

**2.011 SURVIVORSHIP**

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

**2.012 NO WAIVER OF DEFAULT**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

**2.013 PURCHASE ORDERS**

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

**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

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

The Contractor shall:



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

**2.103 RESERVED****2.104 RESERVED****2.105 RESERVED****2.106 RESERVED****2.107 RESERVED****2.108 COMPETITION IN SUB-CONTRACTING**

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

**2.109 RESERVED****2.2 Contract Performance****2.201 RESERVED****2.202 CONTRACT PAYMENT SCHEDULE**

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 and Grant Services. This activity will occur only upon the specific written direction from Purchasing and Grant Services.

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

Unless otherwise agreed in writing, 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., "Payments to Private Enterprises", within forty-five (45) days after receipt.

**2.203 RESERVED****2.204 RESERVED****2.205 ELECTRONIC PAYMENT AVAILABILITY**



Electronic transfer of funds is MANDATORY for State contractors. Vendor is required to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

## **2.206 MiDEAL PROGRAM (IF APPLICABLE)**

**Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges.** As a result of the enactment of this legislation, the MiDEAL Program has been developed. This program extends the use of State contracts to program members. The State agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of State secure a greater return for the expenditure of public funds. It is the policy of Purchasing, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

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

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

## **2.3 Contract Rights and Obligations**

### **2.301 INCURRING COSTS**

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

### **2.302 CONTRACTOR RESPONSIBILITIES**

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

### **2.303 ASSIGNMENT AND DELEGATION**

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing and Grant Services.

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



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

## **2.304 TAXES**

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

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

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

## **2.305 INDEMNIFICATION**

### General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

### Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of



investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

#### Code Indemnification

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

#### Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

#### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

#### Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of



the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan State or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan State or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

### **2.306 LIMITATION OF LIABILITY**

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

### **2.307 CONTRACT DISTRIBUTION**

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

### **2.308 RESERVED**

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

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

### **2.310 LIABILITY INSURANCE**

#### **A. Insurance**

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such



services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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

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

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

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

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

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing, Department of Energy, Labor & Economic Growth. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing, Department of Energy, Labor & Economic Growth, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

- Commercial General Liability with the following minimum coverage:

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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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



The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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

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

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:
 

\$100,000	each accident
\$100,000	each employee by disease
\$500,000	aggregate disease
5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

#### **B. Subcontractors**

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

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



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

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

### **2.311 WORKPLACE SAFETY**

1. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.
2. In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

### **2.312 WORKPLACE DISCRIMINATION**

The Contractor represents and warrants that in performing services for the State pursuant to this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.

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



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

### 2.313 RESERVED

### 2.314 WEBSITE INCORPORATION

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

## 2.4 Contract Review and Evaluation

### 2.401 CONTRACT COMPLIANCE INSPECTOR

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

Department of Energy, Labor & Economic Growth  
Office of Financial and Insurance Regulation  
Attn: Karen Sage  
3rd Floor, Ottawa Building  
P.O. Box 30620  
Lansing, Michigan 48909  
Phone (517) 241-6347  
Email: sagek@michigan.gov

The Program Manager is:

Department of Energy, Labor & Economic Growth  
Office of Financial and Insurance Regulation  
Attn: John Schoonmaker  
3rd Floor, Ottawa Building  
P.O. Box 30620  
Lansing, Michigan 48909  
Phone (517) 373-2707  
Email: schoonmakerj@michigan.gov

### 2.402 PERFORMANCE REVIEWS

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

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

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

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

**2.5 Quality and Warranties****2.501 RESERVED****2.502 RESERVED****2.503 RESERVED****2.504 RESERVED****2.505 RESERVED****2.506 RESERVED****2.507 RESERVED****2.508 RESERVED****2.509 RESERVED****2.6 Breach of Contract****2.601 BREACH DEFINED**

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

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

**2.602 NOTICE AND THE RIGHT TO CURE**

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

**2.603 EXCUSABLE FAILURE**

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been



prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

## 2.7 Remedies

### 2.701 CANCELLATION

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

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

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

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not



limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

## 2.702 RIGHTS UPON CANCELLATION

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

### 2.703 RESERVED

### 2.704 RESERVED

### 2.705 RESERVED

## 2.8 Changes, Modifications, and Amendments

### 2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

### 2.802 TIME EXTENTIONS



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

### 2.803 MODIFICATION

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

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

### 2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

### 2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the State-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:



- (1) The date, circumstances, and source of the order; and
  - (2) That the Contractor regards the order as a change order.
- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.



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

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

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

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

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

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

( ) TIN: \_\_\_\_\_

( ) TIN has been applied for

( ) TIN is not required because:

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

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

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

( ) Other basis: \_\_\_\_\_

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

( ) Bidder is owned or controlled by a common parent

( ) Name and TIN of common parent

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

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

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

DEFINITIONS: "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock, as determined by the Director of the Department of Management and Budget.

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

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



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

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

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

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

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

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

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

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

The bidder has (check the appropriate block):

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

( ) Enclosed its annual representations and certifications.

### 3.006 MiDEAL PROGRAM

**Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges.** As a result of the enactment of this legislation, the MiDEAL Program has been developed. This program extends the use of State contracts to program members. The State and agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of State secure a greater return for the expenditure of public funds. It is the policy of Purchasing, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

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

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

#### **BIDDER MUST CHECK ONE BOX BELOW**

( ) Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized Extended Purchasing Program members in accordance with the terms and prices quoted. Upon request, a complete listing of eligible participants in the MiDEAL Program will be provided if this option is selected.



- ( ) Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized MiDEAL members. We will supply to State of Michigan departments and agencies only.

\_\_\_\_\_  
Authorized Agent Name (print or type)

\_\_\_\_\_  
Authorized Agent Signature

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

### 3.1 Disclosure Issues

#### 3.101 CONFIDENTIALITY

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

##### Protection of Confidential Information

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

##### News releases

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

##### Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in



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

No Implied Rights

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

Remedies

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

Survival

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

Destruction of Confidential Information

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

\_\_\_\_\_ (Initial)

**3.102 FREEDOM OF INFORMATION ACT**

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

\_\_\_\_\_ (Initial)

**3.103 RESERVED**

**3.2 Vendor/Contractor Compliance with Laws**

**3.201 GENERALLY**

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

**3.202 INDEPENDENT PRICE DETERMINATION**

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

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

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

- 1) Has \_\_\_\_\_, Has Not \_\_\_\_\_ been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- 2) Has \_\_\_\_\_, Has Not \_\_\_\_\_ been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;
- 3) Has \_\_\_\_\_, Has Not \_\_\_\_\_ been convicted of any other offense, violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on state projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;
- 4) Has \_\_\_\_\_, Has Not \_\_\_\_\_ failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- 5) Has \_\_\_\_\_, Has Not \_\_\_\_\_ violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;



- 6) Has \_\_\_\_\_, Has Not \_\_\_\_\_ refused to provide information or documents required by a contract including, but not limited to information or document necessary for monitoring contract performance;
- 7) Has \_\_\_\_\_, Has Not \_\_\_\_\_ failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/purchase order; and
- 8) Has \_\_\_\_\_, Has Not \_\_\_\_\_ failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.
- 9) The vendor certifies and represents, to the best of his knowledge that the supplier and/or any of it's Principles:
  - A. Are \_\_\_\_\_, Are Not \_\_\_\_\_ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any state or federal agency.
  - B. Has \_\_\_\_\_, Has Not \_\_\_\_\_ not with in a 3-year period preceding this bid, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.
  - C. Are \_\_\_\_\_, Are Not \_\_\_\_\_ presently indicted for, or otherwise criminally or civilly charged by a State and entity with, the commission of the any of the offenses enumerated in section 3.1(c) of this contract.
  - D. The vendor Has \_\_\_\_\_, Has Not \_\_\_\_\_ within a 3-year period preceding this solicitation had one or more purchases terminated for default by any state or federal agency.

### **3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT**

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

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

### **3.205 DEBARMENT OF SUB-CONTRACTORS**

Contractor shall require each primary sub-contractor, whose sub contract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of the award of the sub contract, the sub-contractor, or



its principals, is or is not debarred, suspended, or proposed for debarment by the State of Michigan. The contractor shall then inform the state of the sub-contractor's status and reasons for contractor's decision to use such sub-contractor, if contractor so decides.

### 3.206 ETHICS: GRATUITIES and INFLUENCE

#### Gratuities

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

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

#### Influence

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

### 3.3 Vendor/Contractor Workplace Fitness

#### 3.301 DRUG-FREE WORK PLACE

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

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

\_\_\_\_\_ (Initial)

#### 3.302 WORKPLACE SAFETY-RESERVED

#### 3.303 WORKPLACE DISCRIMINATION-RESERVED



### 3.304 LABOR RELATIONS

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an **unfair labor practice** compiled pursuant to Section 2 of the Act. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

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

\_\_\_\_\_ (Initial)

### 3.305 RESERVED

### 3.306 AFFIRMATIVE ACTION

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

### 3.307 RESERVED

### 3.308 ENVIRONMENTAL AWARENESS

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

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

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

'Post-Consumer Waste', is defined as any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product

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



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

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

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

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

**Certification**

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

\_\_\_\_\_ (Initial)

**C. Clean Air and Water**

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

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

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

( ) Product does not contain Mercury

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

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

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

( ) Product does not contain BFR's

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

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

(1) The bidder must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number.



This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, insert 'None')	Identification Number

- (2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (3) The apparently successful bidder agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.
- (4) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (5) Neither the requirements of this clause nor any act or failure to act by the State shall relieve the Contractor of any responsibility or liability for the safety of State, Contractor, or subcontractor personnel or property.
- (6) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (7) The State's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the State for these purposes.
  - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
  - (c) The State is not precluded from using similar or identical data acquired from other sources.

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



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

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

'Waste reduction', means any practice, such as an equipment or technology modification, a process or procedure modification, a reformulation or redesign of a produce, a substitution of raw materials, or improved management, training, or inventory control, which practice is undertaken by a person to directly or indirectly reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced.

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

#### **H. Ozone Depleting Substances**

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

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

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

'**Warning:** Contains (or manufactured with, if applicable) \_\_\_\_\_ (insert the name of the substance(s).), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.'

#### **I. Refrigeration and Air Conditioning**

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

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

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



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

\_\_\_\_\_ (Initial)

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

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

Listed End Product	Listed Country of Origin

- (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 such end product. On the basis of those efforts, the bidder certifies that it is not aware of any such use of child labor.

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

Contractor hereby represents and certifies that, to the best of his /her knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, furnished to the state under this agreement, have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

\_\_\_\_\_ (Initial)

**3.4 Vendor/Contractor Demographics**

**3.401 SMALL BUSINESS REPRESENTATION**

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



Provide the following information:

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

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

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

DEFINITIONS:

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

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

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

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

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

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

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

**3.403 OWNERS AND OFFICERS**

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

Name and Title	% of Interest or Ownership

**3.404 RESERVED**

**3.5 State Concerns**

**3.501 GENERAL COMPANY DEMOGRAPHICS**

1. Company Name: \_\_\_\_\_
2. Company Address: \_\_\_\_\_  
\_\_\_\_\_
3. Principle Place of Business (zip code): \_\_\_\_\_
4. Organization type
  - ( ) Limited Liability Company
  - ( ) Limited Liability partnership
  - ( ) Corporation
  - ( ) Partnership



- ( ) Health Care Provider
- ( ) Hospital or extended care facility
- ( ) Sole Proprietorship
- ( ) Other: \_\_\_\_\_

5. Year of establishment \_\_\_\_\_

### 3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES

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

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

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

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

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

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

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

### 3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS

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

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

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

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



Authorized Agent Name (print or type)

\_\_\_\_\_  
Authorized Agent Signature

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

Bidder shall also indicate one of the following:

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

**3.505 PLACE OF PERFORMANCE**

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

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

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

**3.506 FORMER STATE EMPLOYEES**

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

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

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

Name	Department, Division	Date of Employment




**3.507 DOMESTIC END PRODUCT**

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

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

Excluded End Products	Country of Origin

\_\_\_\_\_ (Initial)

**3.508 USE TAX**

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

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

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

\_\_\_\_\_ (Initial)

**3.509 TAX EXCLUDED FROM PRICE**

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

\_\_\_\_\_ (Initial)

**3.510 TAX PAYMENT**

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



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

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

\_\_\_\_\_ (Initial)

### 3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS

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

#### (1) Persons with disabilities

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

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

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

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

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

See Paragraph 3.503 for definition.

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

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

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

### 3.512 UTILIZATION OF BUSINESS CONCERNS

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

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

### 3.513 RESERVED

### 3.514 RESERVED



**3.515 PLACE OF SUBCONTRACTING**

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

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

**3.516 RESERVED**

**3.517 SERVICES NEEDED IN PERFORMANCE**

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

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

**3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP**

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

Employee Name	Title

**3.6 Changes to Disclosures**



If any of the certifications, representations, or disclosures indicated in this document change after awarding of a contract, the Contractor is required to report those changes immediately to the Department of Energy, Labor & Economic Growth, Purchasing and Grant Services.

**3.7 State Assertions**

If the state finds that grounds to debar exist, it shall send notice to the vendor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the vendor does not respond with a written request for a hearing within twenty (20) calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight (8) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process. Authority given by Executive Order 2003-1.

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

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

\_\_\_\_\_  
**Name of Vendor/contractor/supplier**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Address of supplier**

\_\_\_\_\_  
**Telephone and fax No. of supplier**

\_\_\_\_\_  
**Signature of supplier's authorized representative**

\_\_\_\_\_  
**Title of Supplier representative**

\_\_\_\_\_  
**Date**



## Article 4 – The Bidding Process

### 4.0 Introduction

#### 4.001 PRE BID QUESTIONS

1. Questions concerning the specifications contained herein are to be submitted, in writing, no later than **3:00 p.m. on April 15, 2009:**

Buyer: Shay Gaffey  
DELEG, Purchasing and Grant Services  
P O Box 30004  
Lansing, MI 48909  
Email: gaffey@michigan.gov

The state will not respond to telephone inquiries or visitation by bidders or their representatives. All questions are to be put in writing and must be submitted electronically and sent as an attachment in MS Word 97 or Rich Text Format (RTF). Answers to questions will be prepared as an addendum and posted on the state's web site under the corresponding bid number: <http://www.michigan.gov/dleg/0,1607,7-154-10555-176304--,00.html>. The posted addendum officially revises and supercedes the original specifications, terms and conditions. The addendum will be posted approximately April 16, 2009.

#### 4.002 PRICE AND NOTATIONS

Prices and notations must be typed or in ink. Prices shall be for new items only unless specified otherwise in the ITB. The person signing the proposal should initial any form of pricing corrections made to the proposal by the bidder prior to 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 prior to the bid submission.

#### 4.003 DOUBLE SIDED ON RECYCLED PAPER

Bidders should use recycled paper for all printed and photocopied documents related to the submission of their bid and fulfillment of any resulting contract and shall, 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.

### 4.1 Proposal Details

#### 4.101 GENERALLY

To be considered, each bidder shall submit a COMPLETE proposal in response to this ITB, using the format provided in Section I. No other distribution of proposals is to be made by the bidder. The Proposal itself must include a statement as to the period during which the Proposal itself remains valid. This period must be at least 90 (ninety) days from the due date for responses to this ITB.

#### 4.102 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.

#### 4.103 CHANGES

Changes made to the ITB as the result of responses made to questions or concerns through correspondence will be placed on the State web site as an addendum to the ITB. Neither State Departments nor Purchasing and Grant Services will respond to telephone inquiries or visitation by bidders or their representatives. Purchasing and Grant Services does not commit to answering questions during the last seven (7) workdays prior to sealed bid opening date.



## 4.2 RESERVED

## 4.3 Proposal Format

The following information shall be included in all proposals. These factors will be used in evaluating each response to the ITB. Proposals should be formatted to include each of the following sections, which should be clearly identified with the appropriate headings:

### 4.301 COMPANY INFORMATION/CAPABILITIES

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 hereunder. 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. Bidders shall demonstrate their ability to handle a Contract of this size and scope. In addition, please indicate how long the company has been in business.

### 4.302 PRIOR EXPERIENCE

Indicate the prior experience of your firm which you consider relevant to your ability to successfully manage a contract for the commodity or service defined by this Invitation to Bid. Include sufficient detail to demonstrate the relevance of such experience. Proposals submitted should include, in this section, descriptions of qualifying experience to include project descriptions, costs, and starting and completion dates of projects successfully completed. Also, include the name, address, and phone number of the responsible official of the client organization who may be contacted.

Bidders shall provide 3 (three) specific references with their proposal. In addition, please indicate the following:

- a. Number of years of actuarial experience in serving as an insurance regulator or working for insurance regulators.
- b. Number of years of experience reviewing the pricing and actuarial forecast segments of personal automobile and homeowner's rate filings.
- c. Published reports and periodical writings in insurance issues.
- d. Number of years of experience supporting regulatory entities on financial and rate-making reviews of personal and homeowner's and automobile insurance carriers.
- e. Number of years of experience with the insurance industry, including being engaged in analysis of major public policy issues relating to insurance (with an emphasis on property/casualty insurance), including actuarial matters and consumer issues.
- f. Number of years and references in testifying before legislative and administrative hearings on insurance issues.
- g. Knowledge of state and federal laws related to personal automobile and homeowner's insurance.

### 4.303 STAFFING

The contractor must be able to provide appropriate staff to properly service this contract.

Bidder shall discuss the key personnel that will be assigned to the contract; identify the key personnel by name and title; discuss their primary responsibilities; and indicate where these personnel will be physically located during the contract performance.

- A. National authority and highly knowledgeable of personal automobile and homeowner rate making.
- B. A fellow in the Casualty Actuarial Society.
- C. A member of the American Academy of Actuaries.

Resumes/detailed information of all key personnel shall be submitted.



List 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. (See paragraph 3.515)

**4.304 RESERVED**

**4.305 SERVICE CAPABILITIES (see Article 1)**

1. Reporting
2. Special Programs

**4.306 RESERVED**

**4.307 PRICING (see Article 1)**

1. Proposal Pricing
2. Quick Payment terms
3. Price Term

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

In order to be considered for award, bidders are to complete Article 3, Certifications and Representations, and return with their proposal.

**4.309 PROJECT PLAN**

Your proposal must provide the tasks that will be performed, the individual assigned to each task and the time that will be spent in completing the task. The proposal must address how the work will be performed and reports prepared in a timely manner.

**4.4 Submitting Bids and Proposals**

**4.401 SEALED BID RECEIPT**

**SEALED BIDS (PROPOSALS) MUST BE RECEIVED AND TIME-STAMPED IN Purchasing and Grant Services ON OR BEFORE THE DUE DATE AND TIME SPECIFIED ON THE COVER PAGE OF THE RFP. BIDDERS ARE RESPONSIBLE FOR TIMELY RECEIPT IN PURCHASING OF THEIR PROPOSAL. PROPOSALS WHICH ARE RECEIVED AFTER THE SPECIFIED DUE DATE AND TIME CANNOT BE CONSIDERED. Late bids will not be accepted or considered except under the following circumstances: (a) bids received on time do not meet specifications, or (b) no other bids are received.**

**4.402 PROPOSAL SUBMISSION**

Multiple Step. Submit 4 copies of Proposal and 4 copy of your **separately sealed Price Proposal** in accordance with the following instructions, which will ensure that the integrity of the sealed bid process is protected:

1. BIDS (PROPOSALS) MUST BE RECEIVED AND TIME-STAMPED IN PURCHASING AND GRANT SERVICES NOT LATER THAN 3:00 P.M. ON THE DUE DATE SPECIFIED IN THIS ITB IN ORDER TO BE CONSIDERED FOR AWARD. Bidders are responsible for timely receipt of their bid in Purchasing and Grant Services. This responsibility rests entirely with the bidder, notwithstanding delays resulting from postal handling or for any other reasons. Late bids will not be accepted or considered except under the following circumstances: a) bids received on time do not meet specifications, or b) no other bids are received.'

*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 Suite 97 standard desktop tools, without need for conversion. Your electronic submission must be submitted in the following Font type and size: Times New Roman, 12 point. The electronic format may be saved in a compressed format. Bidders are required to 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 vendor as the items that are excluded from the electronic submission.*

1. Multiple Step. Submit your proposal AND INSERT YOUR SEPARATELY SEALED PRICE PROPOSAL BEFORE SUBMITTAL.

**PRICE PROPOSAL MUST BE SEALED SEPARATE FROM TECHNICAL PROPOSAL.**

3. Each envelope/container submitted must contain the response to only one ITB. Do not submit responses to more than one ITB in one envelope/container. Also, faxed bids will not be accepted unless specifically requested by Purchasing and Grant Services.
4. BIDDERS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE ENVELOPE: The Invitation To Bid (ITB) Number; The Date Due, and the Vendor Identification Number (FEIN or SEIN, shown on face of ITB). If a delivery service is used which prohibits such markings on their envelope or package, this information must be placed on the outside of an interior envelope or package.
5. The bid may be submitted utilizing one of the methods below:
  - a. Bids may be delivered to the receptionist desk of Purchasing and Grant Services.
  - b. Purchasing address for proposals submitted by CONTRACT CARRIER, COURIER DELIVERY, or PERSONAL DELIVERY, is:

State of Michigan  
Department of Energy, Labor and Economic Growth  
Purchasing and Grant Services  
4<sup>th</sup> Floor, Ottawa  
611 West Ottawa  
Lansing, Michigan 48933

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

State of Michigan  
Department of Energy, Labor and Economic Growth  
Purchasing and Grant Services  
Post Office Box #30004  
Lansing, Michigan 48909

#### 4.5 Additional Considerations

##### 4.501 PAST PERFORMANCE

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

##### 4.502 FINANCIAL STABILITY

In making an award decision, the State reserves the right to 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.

##### 4.503 SAMPLES/MODELS - RESERVED

##### 4.504 CLARIFICATIONS



If it is determined to be in the best interest of the State and/or if a vendor's proposal is unclear, the State may request from one or all vendors, a clarification. The State will document, in writing, clarification being requested and forward to the vendors affected. This process does not allow for changes, rather to simply clarify the proposal submitted

**4.505 ORAL 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 and Grant Services will schedule these presentations, if required.

**4.506 SITE VISIT**

The State may conduct a site visit to tour and inspect the bidder's facilities. Purchasing and Grant Services will schedule these visits, if required.

**4.6 Award Process**

**4.601 METHOD OF AWARD/SELECTION CRITERIA**

1. Joint Evaluation Committee Proposal Evaluation. In awarding this contract, proposals will be evaluated by a Joint Evaluation Committee (chaired by OFIR) based on the following factors:

Item Number	Evaluated Criteria	ITB Article(s)	Maximum Points
1	Company Information/Capabilities Prior Experience Staffing	4.301 4.302 4.303	75
2	Statement of Work (Article 1  Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:  <ul style="list-style-type: none"> <li>▪ Testify in person or by written submission in administrative or court hearings and assist in creating and explaining exhibits in connection with the testimony.</li> <li>▪ Attend public meetings and administrative hearings to explain personal auto insurance matters.</li> </ul>	1.002	15
3	Service Capabilities	4.305 (as described in 1.2)	5
5	Certifications & Representations	4.308 (Article 3)	5
Total Score	Total of Above Criteria (out of a possible 100 points)		
Price	Minimum of 85 points required for consideration of this criteria (see 4.601.2	4.307 (as described in 1.4)	
Total Points	Total of Technical and Price Criteria		



2. Price Analysis.
- (a) Only those proposals receiving a score of **85 points** or more of the total maximum possible score will be considered for award.
  - (b) Only the price proposals for bidders meeting the minimum point threshold will be opened and reviewed. All other price proposals will remain sealed.
3. Additional Steps. The State may elect to engage in either of the following steps with vendors that meet the minimum point threshold.
- (a) **Pricing Negotiations** - If it is determined to be in the best interest of the State, the State may enter into negotiations with vendors on pricing only. No modification to the technical requirements or specifications will be allowed. If technical requirement or specification changes are required, the BAFO process as described below will be used.
  - (b) **Best And Final Offer (BAFO)** - If the selection process described in the ITB does not lead to a viable award recommendation, or significant deficiencies are identified, the Buyer and/or the JEC (Joint Evaluation Committee) at its 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 such deficiencies. The Best and Final Offers must be submitted by the deadline established by Purchasing.

After reviewing the Best and Final Offers, 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, such changes in the criteria will be published to all bidders as part of the issuance of the DR/CR's.

Bidders will NOT be provided any information about other proposals or prices, or where the bidder stands in relation to others at any time during the evaluation process. Any request for such information will be viewed as a compromise to the stated evaluation process and the requesting bidder may be eliminated from further consideration. Successful requests for proposal information by a bidder, its subcontractor, or an affiliated party before contract award may also result in disqualification.

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

4. Award Decision.
- (a) Best Value/Combination of Score and Price. 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 **best combination of the factors stated in Section 4.3, 4.5, and price**, as demonstrated by their proposal.
  - (b) The State reserves the right to consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.).
  - (c) 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 and Grant Services' judgment, the best interest of the State will be so served.



- (d) 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.
- (e) Thereafter, award recommendation will be made to the Director of Purchasing and Grant Services.

#### **4.602 RECIPROCAL PREFERENCE**

Public Act 237 of 1988 allows Michigan businesses to claim reciprocal preference against out-of-State firms when bidding on solicitations with estimated values of \$100,000 or more.

#### **4.603 STATE ADMINISTRATIVE BOARD**

Bidders are advised that the State Administrative Board prior to final award must approve all contracts/purchase orders in excess of \$25,000. The decision of this Board is final.

#### **4.604 PROTESTS**

The protest [period is being waived for this contract.](#)



ATTACHMENT A – PRICING

Contractor's proposal shall include a cost proposal providing a flat hourly rate. The rates must incorporate any direct or indirect costs, including travel. The State will not reimburse travel time or expenses.

Actuary Expert Testimony in Automobile/Homeowners Insurance

\$\_\_\_\_\_/hourly