



**STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS**

REQUEST FOR QUALIFICATION #07118200128

Hazardous Waste Cleanup Services – STATEWIDE PREQUALIFICATION

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KEY MILESTONE DATES

KEY MILESTONE / PHASES	TARGET DATES
Request for Qualification Issued	Friday, April 11, 2008
Vendor Questions Due	Wednesday, April 23, 2008 by 3:00 PM
Published Responses to Questions	Friday, April 25, 2008
Vendor Qualifications Due	Friday, May 9, 2008 by 3:00 PM
Estimated Notification of Approved Vendor Pre-Qualification	Friday, June 6, 2008

This solicitation will not directly result in the recommendation or awarding of a contract, but rather for the evaluation and recommendation for approval of companies seeking pre-qualification status.



Hazardous Waste Cleanup Services – STATEWIDE PRE-QUALIFICATION

REQUEST FOR QUALIFICATION - MASTER INTERNET DOCUMENT LIST

- RFQ ATTACHMENT 1: REQUEST FOR QUALIFICATIONS (RFQ)**
- RFQ ATTACHMENT 2: SAMPLE STATEMENT OF WORK & DELIVERABLES**
- RFQ ATTACHMENT 3: PRE-QUALIFICATIONS TECHNICAL REQUEST FORM**
- RFQ ATTACHMENT 4: MAP AND CHART OF COUNTIES BY REGION**
- RFQ ATTACHMENT 5: VENDOR QUESTIONS & STATE ANSWERS (To Be Posted)**

- Bidders must submit items identified on the checklist below to ensure completeness of the proposal submittal. Bidders must include this checklist with their proposal.
- **Please refer to Article 4 – Section 4.055 for detailed requirements of proposal submittal.**
- Failure to submit required documents prepared in proper format with required number of copies (in both printed form and CD) may be considered non-responsive and may not receive further award consideration for pre-qualification eligibility.
- Bidders may obtain via the www.michigan.gov/buymichiganfirst web site an electronic copy of all documents to help prepare a proposal, reference the “[Additional RFP Attachments](#)” link under “Bids and Proposals”



RFQ Checklist for Bidder Proposal Contents and Responsiveness

This checklist is provided as a convenience for your proposal preparation. If you have any questions concerning these requirements please contact the Buyer listed on the front page of this RFQ document.

Articles 1, 2, 3, & 4:

_____ The complete proposal was submitted to the appropriate location and on time, with one (1) signed original, the appropriate number of additional copies, and the instructed number of copies of the electronic version, on CD/3.5-inch disks. Hard copy and electronic versions of pricing were sealed separately, if instructed to do so in the RFQ.

Article 1:

_____ Responses have been provided for all items requested in Article 1, Sample Statement of Work & Deliverables (Attachment #2), and the Request For Qualifications, and as requested in Attachment #3 PRE-QUALIFICATION TECHNICAL RESPONSE FORM. Technical Proposal Document/Requirements have been met and responses are included within the format designated by the State in Article 4.

_____ All items in the Required Bidder Information has been completed.

Article 2:

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

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

Other:

_____ 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.

_____ A Letter of Submittal (DMB 285 Document – found under ITB Document on the RFQ webpage) and a copy of the Certifications & Representations have been signed by an individual authorized to legally bind your company and the original signature copy has been submitted.

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Article 1 – Statement of Work (SOW)

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

As stated in Section 4.013 of this document, bidders are reminded that the sole point of contact concerning the RFQ is the Buyer, Lymon C. Hunter, CPPB, in DMB-Purchasing Operations. Any communication in regards to this RFQ with anyone other than the Buyer during the RFQ process may result in disqualification and/or debarment.

1.000 Project Identification

1.001 Project Request

A. STATE SOLICITATION

This is a Statewide Request for Qualification (RFQ) to solicit vendor qualifications for the State of Michigan, Department of Environmental Quality, Remediation and Redevelopment Division to perform Hazardous Waste Cleanup Services and related tasks, and to establish a Pre-Qualified Vendor Pool to bid for future Contract(s), for location(s) at facilities throughout the State of Michigan.

Pre-qualification does not guarantee a contract with the State, but rather will pre-qualify vendors to bid on upcoming contracts.

Additionally, the established Pre-Qualified Vendor Pool resulting from this RFQ may be utilized by other State agencies for Hazardous Waste Cleanup Services and related tasks falling within their delegated authority.

B. VENDOR ELIGIBILITY and PROPOSALS

Article I of this document is designed to provide bidders with information about the States request for vendor qualifications relative to the States projected needs requirements.

Consideration for pre-qualification approval will include evaluation of the Vendor's Proposal of their qualifications in accordance with the specifications and the terms and conditions, as stated within this solicitation.

Failure to respond to any requirement may disqualify the Vendor from further consideration or participation in this solicitation. To insure a quality RFQ result and fair evaluation, the information a vendor submits in response to these sections must be appropriate and relevant to the program and criteria described in this solicitation.

C. Pre-Qualification Approvals

This solicitation is exclusively for the purpose of informing vendors of the States interest in the creation of a pre-qualified vendor pool for Hazardous Waste Cleanup Services and related tasks whereby interested vendors would submit their company qualifications as per the requirements outlined herein. **THIS SOLICITATION WILL NOT DIRECTLY RESULT IN THE RECOMMENDATION OR AWARDED OF A CONTRACT, BUT RATHER FOR THE EVALUATION AND RECOMMENDATION FOR APPROVAL OF COMPANIES SEEKING PRE-QUALIFICATION STATUS.**

However, as stated in Article 4 of this Solicitation, the State reserves the right to approve pre-qualification of vendors by region or statewide, or to reject any and all vendor submissions in whole or in part, if, in the Director of Purchasing Operations' judgment, the best interests of the State will be so served. The State seeks to establish partnerships that will enable it to meet its goals efficiently and effectively.

The Anticipated effective period (cycle) of the resulting approved pre-qualified vendor pool will be for approximately (6) six years between 10/01/2008 and 09/30/2014. An annual refresh period will establish an open enrollment period to allow those potential vendors who either missed or failed any subsequent pre-qualification period to be afforded another opportunity. The solicitation for the annual open enrollment is anticipated to be



initiated during the month of April of each year and any resulting approvals may be for only the remaining years of the primary (6) six year cycle.

D. RIGHT TO RESCIND

The State of Michigan reserves the right to rescind, suspend, or terminate any approval for Hazardous Waste Cleanup Services and related tasks pre-qualification previously issued to any vendor whose performance or company qualifications has been found to be in conflict with the best interest of the State.

1.002 Background

The Michigan Department of Environmental Quality (MDEQ) periodically must take actions necessary to abate acute risks at sites of environmental contamination in order to protect public health, safety and welfare, and the environment. Follow-up actions may include limited investigation to properly assess risks and to delineate wastes that must be removed and disposed.

Occasionally, hazardous and non-hazardous waste materials are found at abandoned facilities, or on undeveloped land in the state which require the same waste management services.

These actions and activities may generate small quantities of both hazardous and non-hazardous waste materials which require characterization, packaging, temporary storage, transportation, and disposal. Some of the waste materials managed under this contract are wastes which normally cannot be disposed of at local landfills for various reasons. This group of problem wastes includes, but is not limited to, such items as asbestos, PCBs, liquid industrial waste, rubber tires, fuel tanks, transformers, waste oil, pesticides, lead-acid batteries, and laboratory wastes.

1.003 Statement of Qualifications

NOTE: Pre-qualification does not guarantee work with the State of Michigan but rather pre-qualifies the Vendor to bid on future contracting opportunities that are solicited by the State. Pre-qualification will be based upon the Contractor's response to this Request for Qualifications and the Contractor's agreement to the terms and conditions herein. If you are pre-qualified, you will receive an emailed notice indicating so from the Department of Management and Budget, Purchasing Operations. All approved pre-qualified vendor names will be posted on the States website www.michigan.gov/buymichiganfirst under the category of MRO Rubbish Removal Services.

Subsequent bids/proposals for Hazardous Waste Cleanup Services and related tasks will be evaluated and recommended for award based on, but not limited to, the Contractor's response to that bid solicitation, the Contractor's Statement of Qualifications (on file), the Contractor's past performance, and the needs of the State. This will insure the "Best Value" for the State.

Please provide the following information (Vendor must utilize the attached PRE-QUALIFIED TECHNICAL RESPONSE FORM):

1. State the full name and address of your organization and, if applicable, the branch office or other subordinate element 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. Also indicate how long company has been in business and company sales volumes for the last five (5) years. In addition, please include federal ID or social security number. Also, indicate the type(s) of work your organization can provide based on the categories listed on the cover memo.
2. Indicate the name, title, and address of contact person in your organization authorized to negotiate/expedite a bid quotation/purchase order. Also include telephone number, facsimile number and email address.
3. The Contractor must be able to provide appropriate staff to properly service the State. Please discuss the key personnel that will be assigned and identify the key personnel by name and title, discuss their primary responsibilities, and indicate where these personnel will be physically located.
4. List all Subcontractors. Include firm name and address, contact person, and complete description of work to be subcontracted. Include descriptive information concerning subcontractor's organization and abilities.
5. Describe in detail the location(s) and facilities where your company has regional/alternative offices. Also describe in detail your company's service capacities.



6. Describe the details of all equipment that may be used including the type of equipment and the number of pieces of equipment as well as maintenance provisions and back-up equipment. Also include sufficient detail to demonstrate your company's ability to handle the State work with the equipment you have.
7. Describe in detail the methodology in which Hazardous Waste Cleanup Services and related tasks will be provided to the various State agencies.
8. Indicate the prior experience of your company which you consider relevant to successfully do work for the State. Include sufficient detail to demonstrate the relevance of such experience. Include 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. Provide four (4) specific references.
9. Describe in detail what steps your company takes to monitor quality assurance.
10. Vendor shall discuss their capabilities related to generating reports. Vendor shall be able to provide various reports when requested by the State. See the attached "Sample Scope of Work and Deliverables" for examples.
11. Vendor shall submit liability insurance certificate verifying that the minimum levels of insurance coverage currently in place or the ability to obtain such coverage.

1.100 Sample Scope of Work and Deliverables

1.101 In Scope

Reference Attachment # 2: **Sample** Scope of Work and Deliverables



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven (7) days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) Reserved.
- (e) “Audit Period” see **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Section 1.201**.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to the Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under the Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against the Contract, or an amendment to the Contract (**see Section 2.106**). Contractor shall perform in accordance with the Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
 - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
 - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor’s and the State’s respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;



- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to the Contract.

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Office of Purchasing Operations (“Purch Ops”) and (collectively, including all other relevant State of Michigan departments and agencies, the “State”) included and listed on the Location Specification Sheet(s) included as attachments with this ITB. Purch Ops is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Purch Ops is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms, and conditions of this Contract.** The Contractor Administrator within the DMB – Purchasing Operations for this Contract is:

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

2.015 Contract Compliance Inspector (CCI)

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

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

2.016 Reserved

2.020 Contract Objectives/Scope/Background

2.021 Background - Reserved

2.022 Purpose - Reserved

2.023 Objectives and Scope - Reserved

2.024 Interpretation - Reserved

2.025 Form, Function, and Utility

If the Contract is for use by more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.



2.030 Legal Effect and Term

2.031 Legal Effect

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

2.032 Contract Term

The term of the Contract will be for approximately six years and will commence with the issuance of a Contract. This will be approximately October 01, 2008 through September 30, 2014.

All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contractor, unless otherwise extended pursuant to the Contractor. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contractor's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s) (RESERVED)

2.040 Contractor Personnel

2.041 Contractor Personnel

Personnel Qualifications

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

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

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

2.044 Subcontracting by Contractor

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.
- (b) Contractor shall not delegate any duties under the Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State



exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract shall not relieve Contractor of any obligations or performance required under the Contract.
- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards – Reserved

2.052 Reserved

2.053 Adherence to Portal Technology Tools – Reserved

2.054 Acceptable Use Policy

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

2.060 Deliverables

2.061 Ordering

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

2.062 Software – Reserved

2.063 Hardware – Reserved

2.064 Equipment to be New and Prohibited Products – Reserved



2.070 Performance

2.071 Performance, In General

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

2.072 Time of Performance

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages

The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within 15 days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.

Liquidated damages will be assessed as follows:

Failure of Hazardous Waste Cleanup Services crew member(s) to report to job site on time and/or satisfactorily provide specified Hazardous Waste Cleanup Services as scheduled may result in an assessment of liquidated damages, which shall consist of:

\$250.00 per day for failure to begin at jobsite and/or

\$200.00 per day for each additional day

that the work remains uncompleted.

The Department reserves the right to bill the Contractor for any damages due to the default of the Contractor.

2.074 Bankruptcy

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



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

2.075 Time is of the Essence

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

2.076 Service Level Agreements (SLAs) – Reserved

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities – Reserved

2.082 Delivery of Deliverables – Reserved

2.083 Testing – Reserved

2.084 Approval of Deliverables, In General-Reserved

2.085 Process For Approval of Written Deliverables – Reserved

2.086 Process for Approval of Services

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

2.087 Process for Approval of Physical Deliverables – Reserved

2.088 Final Acceptance

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

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (Article 1). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in



Article 1 and the Location Specification Sheet (LSS) unless specifically identified in an applicable Statement of Work.

(c) **Services/Deliverables Covered**

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



- (d) Labor Rates
All time and material charges will be at the rates specified in Article 1, and the Location Specification Sheet (LSS).

2.092 Invoicing and Payment Procedures and Terms

- (a) Invoicing and Payment – In General
 - (i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
 - (ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State’s accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1 and the Location Specification Sheet (LSS)**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor’s invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.
 - (iii) Correct invoices will be due and payable by the State, in accordance with the State’s standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes

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

(c) Out-of-Pocket Expenses

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

(d) Pro-ration

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

(e) Antitrust Assignment

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

(f) Final Payment

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

2.093 State Funding Obligation

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

2.094 Holdback-Reserved



2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under the Contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).

2.100 Contract Management

2.101 Contract Management Responsibility

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in the Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with Article 1, (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in the Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of the Contract.

2.102 Problem and Contract Management Procedures

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

2.103 Reserved

2.104 System Changes – Reserved

2.105 Reserved

2.106 Change Requests

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

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

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

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



Process for Change Requests:

- (i) **State Requests**
If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a “Change”), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a “Change Request”).
- (ii) **Contractor Recommendations**
Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.
- (iii) **Contractor Recommendations**
Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor’s proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (iv) **Contractor Recommendations**
By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a “Contract Change Notice”).
- (v) **Contract Change Notice**
No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (vi) **Contract Change Notice**
If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of the Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Reserved

2.110 Records and Inspections

2.111 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.

2.112 Errors

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



2.120 State Responsibilities

2.121 State Performance Obligations

- (a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.
- (b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.
- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in the Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under the Contract to the extent such default or delay is caused by nonperformance of the State's obligations under the Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under the Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

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

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

2.132 PCI Data Security Requirements – Reserved

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

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



2.152 Confidentiality

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

2.153 Protection of Confidential Information

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

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or



disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights

2.161- 2.166 Reserved

2.167 General Skills

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

2.170 Warranties And Representations

2.171 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under the Contract. The performance of all obligations under the Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under the Contract.
- (b) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (c) It is qualified and registered to transact business in all locations where required.
- (d) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (e) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (f) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract.
- (g) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (h) All financial statements, reports, and other information furnished by Contractor to the State in connection with the award of the Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.



- (i) All written information furnished to the State by or behalf of Contractor in connection with the Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (j) It is not in material default or breach of any other Contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any Contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Reserved

2.173 Equipment Warranty – Reserved

2.174 Reserved

2.175 Standard Warranties – Reserved

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

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

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



Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in the Contract's termination.

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

- 1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

- 4. Employers liability insurance with the following minimum limits:

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

- 5. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the 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 the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the



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

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of the 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 the 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 the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the 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 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) **General Indemnification**

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

(b) **Code Indemnification**

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

(c) **Employee Indemnification**

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

(d) **Patent/Copyright Infringement Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the



Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under the Contract:

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within 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 the Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within 10 days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.



2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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



2.211 Termination for Cause

- (a) In the event that Contractor breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate the Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that the Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in the Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under the Contract.
- (c) In the event the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause shall cease on the effective date of the termination.
- (d) In the event the Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of Contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a termination for convenience.

2.212 Termination for Convenience

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

2.213 Non-Appropriation

- (a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State shall have the right to terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case



may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate the Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.216 Rights and Obligations Upon Termination

- (a) If the Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates the Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to the Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event the Contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party



designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 60 days. These efforts shall include, but are not limited to, the following:

(a) **Personnel**

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

(b) **Information**

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

(c) **Payment**

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

2.219 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

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

2.220 Termination by Contractor

2.221 Termination by Contractor

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

2.230 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in



the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 Allowance of Contractor Costs

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

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
 - (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or



severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see www.michigan.gov/mdcs.

2.270 Litigation

2.271 Disclosure of Litigation

(a) Disclosure.

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

(b) Assurances.

In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:



- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform the Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform the Contract and any Statements of Work in accordance with its terms and conditions, and
 - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.
- (c) Notifications.
Contractor shall make the following notifications in writing:
 - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify Purchasing Operations.
 - (2) Contractor shall also notify Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor shall also notify Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

For the purposes of this Section, “Hazardous Materials” is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) “Hazardous Materials” under the Hazardous Materials Transportation Act, (2) “chemical hazards” under the Occupational Safety and Health Administration standards, (3) “chemical substances or mixtures” under the Toxic Substances Control Act, (4) “pesticides” under the Federal Insecticide Fungicide and Rodenticide Act, and (5) “hazardous wastes” as defined or listed under the Resource Conservation and Recovery Act. The Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor’s Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial



- danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
 - (c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.
 - (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 General

2.291 Amendments

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

2.292 Assignment

- (a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.
- (b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

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



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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

(a) Notifications

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

State of Michigan:

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

Contractor(s):

Name
Address

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution

(a) Media Releases

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

(b) Contract Distribution

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

2.298 Reformation and Severability



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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

Contractors shall collect and pay all applicable federal, state, and local employment taxes.

2.306 Reserved

2.307 Call Center Disclosure

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

2.308 Future Bidding Preclusion

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

2.310 Reserved



2.320 Extended Purchasing

2.321 MiDEAL

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

The Contractor will supply Contract Services and equipment at the established State of Michigan Contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under the Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.322 State Employee Purchases – Reserved

Article 3 – Certifications and Representations

Bidders must 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 of a Bidder that fails or refuses to submit any of the requested information. Unless otherwise stated, information in Article 3 will not be used in evaluating Bidder’s response.

If Bidder has previously submitted information in response to this Article within the last year as the Contractor for a signed Contract with the State (check the appropriate block):

() Submitted to State on _____, which is incorporated by reference, and are current, accurate, and complete as of the date of the Bidder’s bid response, except as follows (insert “none” if not applicable):

(or)

() Enclosed is annual certifications and representations

3.010 Introduction

3.011 Bidder Identification

Bidder Name: _____

() Federal ID Number: _____ (TIN or social security number)

() DUNS Number: _____

Bidder is not required to have a DUNS number, but if Bidder does have one it must be listed.

3.012 Changes to Information

If any of the certifications, representations, or disclosures indicated in this document change during consideration of the Bidder’s responses or after awarding of a Contract, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

_____ (Initial)

3.013 False Information

If it is determined that a Bidder purposely or willfully submitted false information, the Bidder will not be considered for award, the State will pursue debarment of the Bidder, and any resulting Contract that may have been established will be terminated. 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 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 Vendor lists through the regular application process. Authority given by Executive Order 2003-1.

Bidder may review the State’s debarment policy at: www.michigan.gov/buymichiganfirst (click on the link to Debarment Policy)

_____ (Initial)

3.020 Representations

3.021 Certification of Compliance with Credit Card Regulations – Reserved

3.022 Use Tax (See Article 2, Section 2.092)



Bidders (and their affiliated organizations, including subcontractors) 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. 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 are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two (2) 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.

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 into the State.

_____ (Initial)

3.023 Tax Excluded from Price (See Article 2, Section 2.092)

- (a) Sales Tax: For purchases made directly by the State, 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.
- (b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State’s exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent 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 Contractor viewing upon request to the Contract Administrator.

_____ (Initial)

3.024 Tax Payment

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

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

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

_____ (Initial)

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

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

_____ (Initial)

3.026 Utilization of Business Concerns

It is the policy of the State that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, 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 State Contracts, including Contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

Hazardous Waste Cleanup Services – STATEWIDE PRE-QUALIFICATION

RFQ No. 07118200128



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

_____ (Initial)

3.027 Owners and Officers

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

Name and Title	% of Interest or Ownership

Contractor shall:

- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
- (2) Provide Purchasing Operations 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.

_____ (Initial)

3.028 Subcontractors

- (a) Bidder shall require each Subcontractor whose subcontract will exceed \$25,000 to disclose to the Bidder, in writing, whether, as of the time of the submission of Bidder's response to this RFP, the Subcontractor or its principals is debarred, suspended, or proposed for debarment by the State. The Bidder shall then inform the State of the Subcontractor's status in its response and provide reasons for Bidder's decision to use Subcontractor, if Bidder so decides.
- (b) Indicate below **ALL** work to be subcontracted under any resulting Contract (use additional attachment if necessary; estimates are acceptable):

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

3.030 Disclosures

3.031 Reserved

3.032 Bidder Compliance with State and Federal Law and Debarment

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



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

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

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

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

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

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

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

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

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

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

Has _____ Has Not _____ not with in a three (3) year period preceding this RFP, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.

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.

- (c) The Bidder shall provide immediate written notice to the State if, at any time before the Contract award, the Bidder learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances.
- (d) A certification that the Bidder or its Subcontractors is presently debarred, suspended, proposed for debarment or declared ineligible for award of a Contract by any state or federal agency will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the Bidder's responsibility. Failure to furnish the certification or provide such information as requested by the State may render the Bidder response non-responsive.



- (e) Nothing contained in this Section shall be construed to require establishment of a system of records in order to render, in good faith, the certification required this Section. The knowledge and information of a Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.
- (f) If it is later determined that the Bidder knowingly rendered an erroneous certification under this Section, in addition to the other remedies available to the State, the State may terminate any resulting Contract for default.

Bidder may review the State's debarment policy at www.michigan.gov/buymichiganfirst (click on the link to Debarment Policy).

_____ (Initial)

3.033 Ethics: Gratuities and Influence

Gratuities

The right of the Bidder/Contractor to proceed may be terminated by written notice, if the State determines that the Bidder/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.

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

Influence

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

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

_____ (Initial)

3.034 Place of Performance

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

Bidder, in the performance of any resulting Contract, INTENDS _____ DOES NOT INTEND _____ to use one or more plants or facilities located at a different address from the address of the Bidder indicated in this bid. 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

_____ (Initial)

3.035 Former State Employees

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

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

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

Name	Department, Division	Date of Employment

_____ (Initial)

3.036 Domestic End Product

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

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

Excluded End Products	Country of Origin

_____ (Initial)

3.037 Environmental Awareness

“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. ADD: recycled content and recyclability, energy efficiency, and the presence undesirable materials in the product, particularly persistent, bioaccumulative toxic chemicals, (PBTs).

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

- (1) Recycled Content and Recyclability
 - (a) Recycled Packaging. Bidder 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 Bidder offer packaging which:



- (i) is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 25-50% recovered fiber, including 25-50% post-consumer fiber for all corrugated cardboard);
 - (ii) minimizes or eliminates the use of polystyrene or other difficult to recycle materials;
 - (iii) minimizes or eliminates the use of disposable containers such as cardboard boxes;
 - (iv) provides for a return program where packaging can be returned to a specific location for recycling; and
 - (v) contains materials which are easily recyclable in Michigan..
- (b) Recycled Content of Products Offered. Bidder is expected to offer products using Recovered Materials suitable for the intended use whenever possible. The following definitions apply to "Recovered Material":

"Post-Consumer Waste" means 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" means industrial by-products and wastes generated after completion of a manufacturing process that would normally be disposed.

Bidder is 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 any resulting Contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable Contract specifications.

_____ (Initial)

- 2) Energy efficiency –
"Energy efficient products" means products that have excellent performance in terms of using less energy than other products that perform the same function.

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

- (3) Materials Identification and Tracking (or title Materials of Concern)

- (a) 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 any resulting Contract).

The Bidder must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under any resulting 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 for any resulting Contract.

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

This list must be updated during performance of the Contract whenever the Contractor determines that any other material to be delivered under any resulting Contract is hazardous.

The apparently successful Contractor 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 Contractor is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Contractor being considered non-responsive and ineligible for award.

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 Contract Administrator and resubmit the data.

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.

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.

- (b) The State's rights in data furnished under any resulting Contract with respect to hazardous material are as follows:
 - (i) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
 - (A) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (B) Obtain medical treatment for those affected by the material; and
 - (C) Have others use, duplicate, and disclose the data for the State for these purposes.
 - (ii) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of any resulting Contract providing for rights in data.
- (c) The State is not precluded from using similar or identical data acquired from other sources.
- (d) Mercury Content.
 It is the clear intent of State agencies to avoid purchasing products that contain mercury whenever possible. Bidder 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. Bidder 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)



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

- (e) Brominated Flame Retardants (BFR). There is increasing concern about environmental problems caused by polybrominated diphenyl ethers flame retardants. BFRs are widely used in a variety of products, including electronics and electrical equipment, as well as in upholstery and other textiles. To make an informed purchasing decision, we require that Bidders disclose the identity of all flame retardants used in products offered.

For each product offered, please list the components that contain flame retardants and the name and CAS number of the flame retardant(s) they contain. The Bidder may need to ask the manufacturer or material supplier for this information. Bidders are encouraged to provide safer, non-halogenated flame retardants alternatives when available.

() Product does not contain BFR's

() Product does contain BFR's

Product	Product Component
Flame Retardant Name	Flame Retardant CAS

- (f) 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 Bidder 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."

- (g) Refrigeration and Air Conditioning. Bidder 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 any resulting Contract.

- (h) Waste Reduction Program. Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by any resulting 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.

- (i) Clean Air and Water. Bidder certifies that any facility to be used in the performance of any resulting Contract:

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

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

- (j) Emergency Planning and Community Right-to-Know Reporting. By signing this bid response, the Bidder certifies that:

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

3.038 Knowledge of Child Labor for Listed End Products

- (a) Definition.

“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.

_____ (Initial)

3.039 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 3.055 and 3.056 in determining future awards and Contractor standing with the State.

(1) Persons with disabilities

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

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

Subcontractor(s) Name: _____

(2) Community Rehabilitation Organizations

Bidder IS ____ IS NOT ____ purchasing supplies and/or service from a community rehabilitation organization in the performance of any resulting Contract.

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

Subcontractor(s) Name: _____

3.040 Services Needed in Performance

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

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

3.041 Employee and Subcontractor Citizenship

Bidder certifies that all employees, Contractors, Subcontractors, and any other individual involved in the performance of a 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

3.042 RFP Preparation

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

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

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

envy

3.050 Bidder Information

3.051 Expatriated Business Entity

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

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

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

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

3.052 Affirmative Action Program

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

3.053 Small Business Representation

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

Provide the following information:

_____ (Estimate # of employees)

\$ _____ (Estimate of annual revenue)

3.054 Women, Minority, Or Veteran-Owned Small Business Representation

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

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

3.055 Business Owned by Persons with Disabilities / Qualified Disabled Veteran

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

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

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

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

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

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

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

3.056 Community Rehabilitation Organization

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

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

3.057 Certification of a Michigan Business

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

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

Hazardous Waste Cleanup Services – STATEWIDE PRE-QUALIFICATION

RFQ No. 07118200128



- () 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 Signature

Authorized Agent Name (print or type)

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

Bidder 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: _____)

BIDDER MUST CHECK ONE BOX BELOW

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

() Commodities and/or services on the RFP will not be supplied to State authorized MiDEAL members. We will supply to State departments and agencies only.

Certification and Assurances

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

Name of Bidder/Contractor

Address of Bidder/Contractor

Telephone and Fax No. of Bidder/Contractor

Signature of Bidder's/Contractor's Authorized Representative

Hazardous Waste Cleanup Services – STATEWIDE PRE-QUALIFICATION

RFQ No. 07118200128 

Title of Bidder/Contractor Representative

Date



Article 4 – Bidding Process Information

4.010 Introduction

4.011 News Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFQ and any resulting Contract or the 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.

4.012 Reserved

4.013 Communications

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

4.014 Questions

Questions concerning the ITB are to be submitted, in writing, **no later than, Wednesday, April 23, 2008 by 3:00 PM** (local time) to:

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

All questions must be submitted in writing and sent as an attachment in Microsoft Word or Rich Text Format (RTF). The addendum will be posted within 7 days post-question submission deadline.

4.015 Changes and Answers to Questions

Changes to the RFQ and answers to questions will be prepared as an addendum and posted on the State's web site under the corresponding bid number: www.michigan.gov/buymichiganfirst. The posted addendum officially revises and supercedes the original RFQ.

4.020 Award Process

4.021 Method of Award/Selection Criteria

DMB Purchasing Operations Proposal Evaluation

Responses to the RFQ will be evaluated using the following selection process:

In accordance with the specifications, terms and conditions as stated within this solicitation Consideration for award will be based on:

Evaluation of Proposal of Vendor's Qualification (Proposal score)

Failure respond to each requirement may disqualify the Bidder from further participation in this RFQ. To insure a quality bid result, and fair evaluation, it is important that the information requested in these sections is appropriate and relevant to the project(s) being bid.

BIDDER'S PROPOSAL EVALUATION			Scoring
STEP 1	Technical Evaluation of Proposal of Company Information - and - Bidder Pre-Qualification Determination for State or Region	Company Information / Capabilities Prior Experience / Past Performance Staff Training & Development Quality Assurance / Control Plan / Customer Service Health, Safety & Environmental Protection	Maximum Score = 100 THRESHOLD Minimum Score = 80 Minimum Score of 80 Points = Pre-Qualified Bidder Pool for Region

4.022 Evaluation Criteria

TECHNICAL EVALUATION SCORING

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

STEP 01:

TECHNICAL EVALUATION CRITERIA

- Bidders will be evaluated based on their proposed approach to meeting the detailed Hazardous Waste Cleanup Service specifications identified in STEP 2 (i.e., Work Plan).
- Bidders that achieve a **minimum score of 80 points** in STEP 1 will be placed on a **“Statewide Pre-Qualified Bidder Pool”** and be **eligible to submit proposals for any contracts that expire between 10/01/2008 and 09/30/2014** subject to submitting Article 2 and Article 3. This threshold is designed to separate those who have demonstrated that they can do the work, from those who clearly cannot; this is not to be used as a tool to limit competition. Agencies may utilize the pre-qualified Bidder pool for contracts handled under their delegated authority.
- Bidder is to prepare a narrative of the company/organization’s capabilities/qualification to meeting the State’s anticipated requirements in response to the criteria described in the Sample Specification. Responses must follow the outline below, with the narrative and details organized to match the specific lettered and numbered specifications. Any exhibits or attachments referenced in the bidders narrative that are not embedded in the actual response narrative but rather appended to the proposal, should be clearly labeled with the appropriate specification letters and numbers so that it is clear to which part of the specifications they pertain. The following chart represents the scoring of the particular factors. Refer to Article 1, Attachments #2 and #3, for additional information:



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

4.023 Reserved

4.024 Approval Recommendation

Best Value/Qualified

The Pre-Qualification Approval Recommendation will be made to the responsive and responsible Bidders who offer the best qualified value to the State of Michigan, based upon the Contractor’s response to this Request for Qualifications and the Contractor’s agreement to the terms and conditions herein. Best value will be determined by the Bidder meeting the minimum point threshold of 80-points, as demonstrated by its proposal.

Pre-qualification does not guarantee work with the State of Michigan but rather pre-qualifies you to bid on future contracting opportunities that are solicited by the State for various State owned and leased facilities. If you are pre-qualified, you will receive an emailed notice indicating so from the Department of Management and Budget (DMB). All approved pre-qualified vendor names will be posted on the States website under the category of MRO Rubbish Removal Services. (www.michigan.gov/buymichiganfirst)

Subsequent bids/proposals for Hazardous Waste Cleanup Services and related tasks will be evaluated and recommended for award based on, but not limited to, the Contractor’s response to that bid solicitation, the Contractor’s Statement of Qualifications (on file), the Contractor’s past performance, and the needs of the State. This will insure the “Best Value” for the State.

4.025 Reservations

- (a) The State reserves the right to consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.).
- (b) The State reserves the right to award by item, part or portion of an item, group of items or total proposal, to reject any and all proposals in whole or in part, if, in the Director of Purchasing Operations’ judgment, the best interest of the State will be so served.
- (c) The State reserves the right to award multiple, optional use Contracts. In addition to the other factors listed, offers will be evaluated on the basis of advantages and disadvantages to the state that may result from making more than one award.

4.026 Award Decision

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

4.027 Reserved

4.028 State Administrative Board

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



4.030 Laws Applicable to Award

4.031 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.

4.032 Reserved

4.033 Independent Price Determination

- (1) By submission of a proposal, the Bidder certifies, and in the case of a joint proposal, each party certifies as to its own organization, that in connection with this proposal:
 - (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.

4.034 Freedom of Information Act

All information in a Bidder's proposal and any resulting Contract is subject to the provisions of the Freedom of Information Act, 1976 PA 442, MCL 15.231, *et seq.*

4.035 Taxes

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

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

4.040 Possible Additional Considerations/Processes

4.041 Clarifications

If it is determined to be in the best interest of the State and/or if a Bidder's proposal is unclear, the State may request clarifications from one (1) or all Bidders. The State will document, in writing, clarifications being requested and forward to the Bidders affected. This process does not allow for changes, rather it simply provides an opportunity to clarify the proposal submitted.



4.042 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 Operations, DMB, will schedule these presentations, if required.

4.043 Site Visit

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

4.044 Past Performance

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

4.045 Financial Stability

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

4.046 Reserved

4.047 Pricing Negotiations

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

4.048 Best and Final Offer (BAFO)

If the selection process described in the RFQ 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 Operations.

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

4.050 Proposal Details

4.051 Complete Proposal

To be considered, each Bidder shall submit a COMPLETE proposal in response to this RFQ, using the format specified. No other distribution of proposals is to be made by the Bidder. BIDDERS MUST COMPLETE, SIGN, AND RETURN DMB 285 FORM, WITH THEIR PROPOSAL.

4.052 Efficient Proposal

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



4.053 Price and Notations

Prices and notations must be typed or in ink. Prices shall be for new items only unless specified otherwise in the RFQ. 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.

4.054 Double Sided on Recycled Paper

Bidder, when possible, should use recycled paper for all printed and photocopied documents related to the submission of their bid and fulfillment of any resulting Contract and 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.

4.055 Proposal Format

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

Article 1 – Statement of Work – Bidder must include detailed responses to all tasks/specifications as requested in sections from Article 1 and the PRE-QUALIFICATION TECHNICAL RESPONSE FORM attachment.

Article 2 – Terms and Conditions – Bidder must include a statement agreeing to the Terms and Conditions contained in this Article (found in Technical Document attachment).

Article 3 – Certifications and Representations – Bidder must respond to each section.

4.060 Submitting Bids and Proposals

4.061 Sealed Bid Receipt

SEALED BIDS (PROPOSALS) MUST BE RECEIVED AND TIME-STAMPED IN PURCHASING OPERATIONS ON OR BEFORE 3PM ON THE DUE DATE SPECIFIED ON THE COVER PAGE OF THE RFQ. BIDDERS ARE RESPONSIBLE FOR TIMELY RECEIPT IN PURCHASING OPERATIONS 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.

4.062 Proposal Submission

Submit one (1) original and four (4) written copies of proposal, and electronic copy (see below).

Your proposal should also be submitted in electronic format on a 3 1/2" floppy disk or CD-ROM. All documents and data must be created using tools that are compatible with the Microsoft Office standard desktop tools, without need for conversion. The electronic format may be saved in a compressed format. Any items contained in the Proposal that cannot be saved in the aforementioned format should be clearly identified by the Bidder as the items that are excluded from the electronic submission. NOTE: The electronic version of the price proposal MUST also be sealed separately from the electronic technical proposal and clearly labeled as such.

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

4.063 Responses

- (a) Each envelope/container submitted must contain the response to only one (1) RFQ. Do not submit responses to more than one (1) RFQ in one (1) envelope/container. Also, faxed bids will not be accepted unless specifically requested by Purchasing Operations.
- (b) BIDDERS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE ENVELOPE: The RFQ Number; the Date Due; Bidder Name and the Bidder Identification Number (FEIN or SEIN). 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.



- (c) The bid may be submitted utilizing one (1) of the methods below:
1. Bids may be delivered to the receptionist desk of DMB, Purchasing Operations on the 2nd Floor of the Mason Building. Bidders must allowed adequate time to check in at the security desk on the 1st Floor of the Mason Building before bid submission deadline.
 2. Purchasing Operations address for proposals submitted by CONTRACT CARRIER, COURIER DELIVERY, or PERSONAL DELIVERY, is:
State of Michigan
Department of Management and Budget
Purchasing Operations
2nd Floor, Mason Building
530 West Allegan Street
Lansing, Michigan 48933
 3. Proposals submitted through the US. POSTAL SERVICE should be addressed as follows:

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