Form No. DTMB-3522 (Rev. 10/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET

PROCUREMENT

525 W. ALLEGAN STREET
LANSING, MI 48933

P.O. BOX 30026
LANSING, MI 48909

NOTICE OF CONTRACT NO. **071B6600056**

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Baker Tilly Virchow Krause, LLP	Mark E. Laccetti	Mark.Laccetti@BakerTilly.com
1650 Market Street, Suite 4500	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
Philadelphia, PA 19103	(215) 557-2217	0056

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DIFS	Bob Lamberjack	(517) 335-1746	lamberjackr@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Joshua Wilson	(517) 284-7027	Wilsonj31@michigan.gov

CONTRACT SUMMARY

DESCRIPTION:
Department of Insurance and Financial Services (DIFS) - Financial Examination and Analysis Services Prequalification Program.

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	April 5, 2016	April 4, 2019	2, 1-year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
NET 45	N/A	N/A	

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☒ Yes ☐ No

MINIMUM DELIVERY REQUIREMENTS

N/A

MISCELLANEOUS INFORMATION

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing RFP No. 007116B0006684. Orders for delivery will be issued directly by Departments through the issuance of a Purchase Order Form.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	$555,555.55

For the Contractor:

_____ _____

, **Date**

Contract Administrator

For the State:

_____ _____

Tom Falik, **Date**

Services Division Director

State of Michigan

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Baker Tilly Virchow Krause, LLP ("**Contractor**"), an Illinois corporation. This Contract is effective on April 5, 2016 ("**Effective Date**"), and unless terminated, expires on April 4, 2019.

The Contract may be renewed in writing by mutual agreement of the parties. The Contract may be renewed for up to two (2) additional one (1) year periods.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

   Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

   Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

   Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Joshua Wilson Constitution Hall, 1st Floor, NE 525 West Allegan St. Lansing, MI 48909 (517) 284-7027 WilsonJ31@michigan.gov	Mark E. Laccetti, CPA, CGMA One Liberty Place 1650 Market Street, Suite 4500 Philadelphia, PA 19103 (215) 557-2217 mark.laccetti@bakertilly.com

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

If to State:	If to Contractor:
Joshua Wilson Constitution Hall, 1st Floor, NE 525 West Allegan St. Lansing, MI 48909 (517) 284-7027 WilsonJ31@michigan.gov	Mark E. Laccetti, CPA, CGMA One Liberty Place 1650 Market Street, Suite 4500 Philadelphia, PA 19103 (215) 557-2217 mark.laccetti@bakertilly.com

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

State:	Contractor:
Bob Lamberjack, Chief Examiner Department of Insurance and Financial Services 611 W. Ottawa Street P.O. Box 30220 Lansing, MI 48909 (517) 335-1746 lamberjackr@michigan.gov	Mark E. Laccetti, CPA, CGMA One Liberty Place 1650 Market Street, Suite 4500 Philadelphia, PA 19103 (215) 557-2217 mark.laccetti@bakertilly.com

5. **Performance Guarantee**. Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence Limit $1,000,000 Personal & Advertising Injury Limit $2,000,000 General Aggregate Limit $2,000,000 Products/Completed Operations Deductible Maximum: $50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
Minimal Limits: $5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	

Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate Deductible Maximum: $50,000 Per Loss	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

   Department of Technology, Management and Budget
   Financial Services – Cashier Unit
   Lewis Cass Building
   320 South Walnut St.
   P.O. Box 30681
   Lansing, MI 48909

   Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

   The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

8. **Extended Purchasing Program.** This Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

   If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

   Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

    In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section **Error! Reference source not found.**, Termination for Cause.

    Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

    If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Reserved.**

18. **Reserved.**

19. **Reserved.**

20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

    The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

    The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/cpexpress to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

    Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Reserved**.

22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

    If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

    The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section **Error! Reference source not found.**, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

    The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

    The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

    Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service,

or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.

28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

30. **Reserved.**

31. **State Data.**

    a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.

    b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

    c. Extraction of State Data. Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.

    d. Backup and Recovery of State Data. Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.

e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

32. **Non-Disclosure of Confidential Information**. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential

Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. **Data Privacy and Information Security**.

a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.

b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.

c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. **Reserved.**

35. **Reserved.**

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section **Error! Reference source not found.**, Termination for Cause.

38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

40. **Reserved.**

41. **State Printing.** All printing in Michigan must be performed by a business that meets *one* of the following: (a) have authorized use of the Allied Printing Trades Council union label in the locality in which the printing services will be performed; (b) have on file with the Michigan Secretary of State, a sworn statement indicating that employees producing the printing are receiving prevailing wages and are working under conditions prevalent in the locality in which the printing services will be performed; or (c) have a collective bargaining agreement in effect and the employees are represented by an operations that is not influenced or controlled by management.

42. **Nondiscrimination.** Under the Elliott-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*., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

43. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

44. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days.

The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

50. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.

51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.

53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

54. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").

STATE OF MICHIGAN
Contract No. 071B6600056
Financial Examination/Analysis Services – Pre-Qualification

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

Project Request

This is a Contract for financial examination and analysis services (esp. of insurance companies) for the Department of Insurance and Financial Services (DIFS) to meet the responsibilities listed in Section 1.0 Requirements, other State Departments and MiDEAL Members (authorized local units of government).

The Contractor will be required to submit a proposal per project that DIFS issues through a second tier Request for Proposal (RFP) by email. The scope of work will cover financial examinations or analysis for companies doing business in the State of Michigan, potentially including companies that are located outside the State of Michigan. Financial examinations and analysis could include completing the entire examination or just completing certain tests on information or data maintained in another state. Additionally, insurance companies that are currently located in Michigan may possibly move their books and records out of state and may need examinations (the determination of whether to assign these examinations will be made on a case by case basis).

Background
DIFS regulates a wide range of entities including, but not limited to, the following:

- Full and single line Health Maintenance Organizations (HMOs).
- Blue Cross and Blue Shield of Michigan.
- Multiple Employer Welfare Arrangements (MEWAs).
- Property, Casualty, Life and Health Insurance Companies.
- United States Branches of Canadian Insurers.
- Limited Liability Pools.
- Reciprocal Exchanges.
- Municipal Pools.
- Legislatively Created Entities.

Specifically, DIFS is responsible for regulating the financial solvency and compliance with Michigan insurance laws, regulations, bulletins and NAIC requirements.

A. DIFS Program Objective:

A primary program objective for DIFS is to ensure that insurance companies doing business in the State of Michigan remain solvent and able to fulfill their contractual obligations to policyholders.

DIFS's regulatory responsibilities include ensuring company solvency and policyholder protection and maintaining National Association of Insurance Commissioners (NAIC) accreditation standards. To accomplish this, DIFS must review insurance companies' financial statements in a timely manner and examine each company at least every three (3) years and more frequently for problematic companies and is mandated by Michigan law to examine companies at least once every five (5) years and every three (3) years upon a company's request. Other states require examination reports every three (3) years, and some domestic companies in Michigan write business in these states and therefore need an examination every three (3) years. DIFS must remain in a position to accommodate domestic multi-state licensees with at least a triennial examination. In addition to regularly performing the analysis on the financial statements, DIFS must be able to review and analyze new applications, re-qualification applications, and other requests such as requests for additional authority in a timely manner to not hinder competition in the insurance marketplace.

In addition, to maintain NAIC accreditation DIFS must meet required periods for monitoring and analyzing financial statements and to ensure compliance with Michigan regulations.

B. Level / Volume of Service:

DIFS is responsible for monitoring and analyzing the financial statements of approximately 1,400 Michigan based insurance companies, including approximately 170 domestic insurance companies or insurance related entities. Currently, approximately 20 of these insurance companies do business in the State of Michigan but maintain books and records outside Michigan. During the past five (5) years, DIFS has requested 24 out of state examinations to be completed. The exact number of examinations will vary each year.

1.0 Requirements

1.1 In Scope

Contractor must perform insurance company examinations and analysis as required by individual DIFS second tier RFPs to determine solvency, compliance with Michigan insurance laws, regulations, bulletins and National Association of Insurance Commissioners (NAIC) requirements. Contractor must travel to company sites as necessary to complete examinations and analysis.

1.2 Work and Deliverable

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

A. Second Tier Project Assignment:
DIFS will prepare a written RFP that details the company involved and the work to be performed by the Contractor.

Some project assignments will include several members within an insurance holding company that must be examined at the same time. Each second tier RFP will be submitted to all pre-qualified Contractors by email. Each second tier RFP from DIFS will include the following information:

1. Cover Sheet:
   a. Contractor work statement due date.
   b. Name of company or companies to be analyzed/examined.
   c. Period of company operation time to be reviewed by this analysis/examination.
   d. Expected end work product, i.e., agreed-upon procedures.
   e. Criteria for determining acceptance of deliverables and final acceptance criteria.

2. Excerpts from Company's Annual Statement or Quarterly Statement if Annual Statement is not available:
   a. Appointments can be made to review the entire annual statement or quarterly statements or other documents that are available to the public by contacting DIFS.

B. Second Tier Contractor Proposal:
The Contractor will have approximately three (3) weeks from the date the second tier RFP is received to submit a proposal in response to an RFP. The Contractor must respond to the second tier RFP with a quotation and a project plan. (In detailing costs, the Contractor must not exceed the hourly rates included in Exhibit C.)

1. Responses to second tier RFPs must include the following:

   a. Assignment Scope: Statement of the project assignment.

   b. Dates by which analysis/examination of the company will begin and be completed.

c. Description of the services, including:
   1) Contractor's approach to completing the financial analysis or completing a statutory examination of the company identified in the second tier RFP (to include a history of the company, particular industry considerations, any significant issues raised by DIFS, etc.).
   2) Technical project plan.
   3) End product of the assignment (e.g. all examination work-papers, including a finalized examination report, following NAIC guidelines, etc.).
   4) Individual staff assigned to project.

d. Assigned staff information:
   1) Name and title.
   2) Background and credentials.
   3) Total amount of experience relevant to completing financial examinations.
   4) Specific experience relevant to the type of company being examined.
   (Not necessary to include individual resumes, if included in Contractor's proposal under which this Agreement was awarded.).

   NOTE: It is imperative that Contractor staff who perform these examinations not be affiliated or associated (either financially or contractually) with an entity being examined and that there be no financial or contractual relationship, either written or oral, with an entity being examined and this Contractor, during the life of this Agreement. Failure by the firm to comply with this provision will result in the cancellation of this Contract.

e. Detail of costs:
   1) Staff assigned to project.
   2) Estimated hours assigned for each of the project-staff members.
   3) The hourly rate per staff person. The hourly rate must also include travel costs.*
   4) Total projected cost for examination.

*Hourly rates must be inclusive of travel costs that may be incurred by the Contractor during the normal course of an individual project. Should the Contractor be required to defend their findings at a hearing, DIFS will reimburse the Contractor for any specific travel costs incurred while defending the findings. This reimbursement is in addition to the total cost bid and accepted by the DIFS in response to a second tier RFP. Travel costs incurred to attend hearings must be approved by DIFS prior to incurring and only be incurred to defend the Contractor's findings, pursuant to the State of Michigan Travel policy, as listed on the travel Web site. Travel costs cannot exceed those established by the Department of Civil Service for employee reimbursement; see: http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html

2. FINANCIAL EXAMINATIONS – Proposal responses to a second tier RFP for Financial Examinations must include the following:

   a. The Contractor must develop a specific examination plan for the Company using the NAIC Examiners Handbook process, which must be jointly approved by the Contractor's partner and manager, Examiner-in-Charge, and its Chief Examiner. The Contractor's examination plan must include:

      1) A description of the standard examination tests which the Contractor will use to determine the solvency of the company.

      2) A description of tests which the Contractor will use to determine compliance with Michigan laws, regulations and bulletins and an elapsed time and worker-hours budget.

      3) The specific examination dates, from start date to completion date, without any delays or gaps.

5) All the individual staff assigned to the examination, the areas each individual will be assigned to the examination, and the estimated number of hours each individual will participate in the examination. (Note that this description **must** reflect that the examination's senior level auditor is scheduled on-site continuously throughout the entire examination and that the senior auditor must have previous experience in auditing insurance companies).

C. Service Requirements

1. Financial Examinations
If awarded the financial examination (project) assignment, Contractor must carry out this project under the direction and control of DIFS, and must:

a. Perform specific examination tests identified in the initial examination plan and other examination tests as deemed necessary throughout the course of the examination to determine solvency and compliance with Michigan insurance laws, regulations and bulletins. The Contractor must review the tests performed and the results found with a DIFS examiner on request.

b. Meet the NAIC accreditation standards and other standards of the NAIC for using outside firms to perform examinations. [NAIC requires the use of a CPA on an examination, where the insurer is licensed in more than one (1) state, and other additional requirements will vary by examination and according to each state's circumstances. While there exists many different levels of service that a CPA may provide an insurance department, the use of a CPA in an examination is typically accomplished through an "agreed-upon procedures engagement."] Therefore, in order to comply with NAIC standards many of the examinations conducted under this Contract will be completed using agreed-upon procedures. DIFS will make the final determination whether agreed-upon procedures are necessary and acceptable.

c. Work in conjunction with DIFS consulting actuary firms. The Contractor will be responsible for testing the underlying data used by the consulting actuary for accuracy and completeness.

d. Use, if available, the company's independent certified public accountant (CPA) work-papers to the greatest extent possible without compromising the Contractor's responsibility to perform the necessary tests as defined in the work statement and approved examination plan.

e. Document all work performed and examination findings in examination work-papers, ensuring all work-papers generated during the examination meet its firm's work-paper quality standards, the NAIC Examiners Handbook standards, and DIFS work-paper standards (all work-papers will be reviewed and must be approved by the Examiner-in-Charge (EIC) and Chief Examiner). These work-papers shall become the property of DIFS after the examination.

f. Be responsible for bringing own supplies and equipment. The only items DIFS will request of the company being examined are access to a telephone, facsimile, and a photocopier (as the telephone may or may not have a dedicated line for use with computers).

g. ***Not*** contact the company prior to the on-site examination without written authorization from DIFS, even though it is DIFS's practice to give companies at least 30 days' notice prior to beginning an on-site examination.

h. Assign staffs who are certified public accountants familiar with Michigan insurance laws, regulations, bulletins and NAIC requirements supervising the examination. When performing an examination of Canadian insurers, the Contractor may assign chartered accountants as staff from its Canadian office(s).

i. Identify any items of noncompliance with State statutes and regulations, whether financial or non-financial, which become apparent during the examination. Also, the Contractor must identify any findings, again whether financial or non-financial, where the company could improve its operations, controls or reporting. DIFS will make the final determination about which items should then be discussed with the company and then whether that item should be included in the final report or management letter.

j. Work with, and under the direction of the EIC, to prepare a draft copy of the examination report and management letter on the company. The management letter must include all findings that are not material to the company's financial solvency or code violations, but are areas where the company could improve its operations, controls or reporting.

k. Submit examination findings and work-papers to DIFS within 10 calendar days following the completion of the on-site examination of the company unless otherwise agreed to by DIFS. If the Contractor prepares a draft report and management letter, then the report and management letter must conform to reporting guidelines, as published by the NAIC, and DIFS policies and procedures.

l. Make changes to the report as agreed to, following discussions with DIFS.

m. Hold a meeting with DIFS and the company being examined to discuss any findings or comments arising from the examination. After the meeting, adjust the draft report and management letter based on the meeting and subsequent information received by DIFS and submit the final draft report and management letter to DIFS within 10 calendar days of approval of the draft by the EIC.

n. Attend final exit conference meetings at the DIFS office, if regulated entities accept DIFS's offer for one (1) final exit conference. The cost of travel and hourly rate must be included in the overall cost proposed by the Contractor.

o. Remain available to answer any inquiries or clarify test-work and findings found during the examination until the next examination of the Company is completed. This is normally a three (3)-year period. Also, the Contractor must assist DIFS during any administrative or court proceedings involving the examination reports, the examinations or any matter related to the Contractor's work under this Contract.

p. Upon notice by DIFS, appear or be available to appear for testimony in any administrative or court proceedings involving the examination reports, the examinations or any matter related to the Contractor's work under this Contract. DIFS will pay for this type of service outside the cost proposed under the Contract. However, DIFS will only pay the individual hourly rates agreed to within this Contract. These services will only be provided at the request of the Program Manager and a total agreed price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Program Manager.

q. Remain available to participate in Chapter 81 processes. During the course of an examination, it may become necessary for DIFS to take a Chapter 81 action, such as seizure of the assets or rehabilitation. If these services are above the normal course of the examination, a separate arrangement will be negotiated with the Contractor. DIFS will make the final determination whether the services are above the normal course of the examination. Once a Chapter 81 action is taken, the Director of the Receivership Division, DIFS, may take responsibility for the examination.

r. Remain available to participate in review by the NAIC if necessary. DIFS will go through at least one (1) on-site review by the NAIC accreditation team during this Contract period. The Contractor's anticipated participation would include answering questions about its work-papers and the oversight by DIFS during the examination. DIFS will pay for this type of service outside the cost proposed under the Contract. The rate charged by the Contractor for these services must be the hourly rates agreed to in the Contract. These services will only be provided at the request of the Program Manager and a total agreed price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Program Manager.

s. Remain available to answer any questions or provide any additional documentation requested by the auditor general's office if DIFS is audited during this Contract period by the auditor general's office. DIFS is also audited by the State of Michigan Legislature's Office of the Auditor General. The Auditor General may review the Contractor's work-papers. DIFS will pay for this type service outside the cost proposed under the Contract. The rate charged by the Contractor for these services must be the hourly rates agreed to in the Contract. These services will only be provided at the request of the Program Manager and a total agreed price will be determined before any services are rendered.

NOTE: No additional costs will be provided above the amount agreed to by the Program Manager.

From time to time, zone examiners may participate on these examinations. DIFS may receive little or no advance notice of their participation. These examiners will be assigned specific line items by DIFS to complete and may also want to participate in the planning process. In addition, these examiners will also sign the report so that they will also have the right to review any work-papers produced from the exam; if they (individually or from their zone) report any specific concerns, DIFS may be involved in investigating them.

t. Within ten (10) working days from the beginning of the examination, unless otherwise agreed upon, the Contractor will submit a project plan to the EIC and Chief Examiner for final approval. This final project plan or agreed upon procedures will be finalized after the examination planning has been completed jointly by the Contractor and DIFS. This final implementation plan must be in agreement with the Contractor's accepted and approved quotation and must include the following:

   i. The Contractor's project organizational structure.

   ii. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.

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

   iv. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the Contractor's project plan.

2. Financial Analysis
If awarded the financial analysis (project) assignment, the Contractor must carry out this project under the direction and control of DIFS, and must:

a. Execute a cursory review on all assigned companies' financial statements in accordance with NAIC Guidelines and DIFS policies and procedures within 10 working days of the assignment. Prepare a listing of all companies assigned and make recommendations commensurate with findings. This listing and recommendation will be submitted and reviewed by DIFS.

b. Execute an in-depth review and worksheet of the all assigned companies' financial statements in accordance with DIFS policies and procedures.

c. Complete each separate worksheet within three (3) days from the start date of the review, unless as otherwise agreed to by DIFS. This worksheet will be reviewed and approved by DIFS.

   DIFS may also have comments or concerns that will require additional review, follow up, and documentation by the Contractor.

d. Complete any other tasks required to execute a financial analysis within NAIC Guidelines for the assigned project, as determined by DIFS.

e. Submit concise written biweekly progress reports to DIFS indicating the work and reviews completed during the two (2) weeks, work in progress, problems real or anticipated, estimated date of completion for all.

f. Meet the NAIC accreditation standards and other standards of the NAIC for using outside firms to perform examinations. [NAIC requires the use of a CPA on an examination, where the insurer is licensed in more than one state, and other additional requirements will vary by examination and according to each state's circumstances. While there exists many different levels of service that a CPA may provide an insurance department, the use of a CPA in an examination is typically accomplished through an "agreed-upon procedures engagement."] Therefore, in order to comply with NAIC standards many of the examinations conducted under this Contract will be completed using agreed-upon procedures. DIFS will make the final determination whether agreed-upon procedures are necessary and acceptable.

g. Meet at least monthly with DIFS, or whenever requested by DIFS, with the Contractor's Project Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

D. Second Tier RFP Evaluation

1. Each second tier RFP response will be evaluated utilizing the following criteria:

- Description of Examination Services:
  - Examination Plan (per NAIC guidelines)
  - Service Description (per NAIC guidelines)
- Resource Allocation:
  - Appropriate supervisory-staff time allocated (per NAIC guidelines)
  - Computer specialist allocated to evaluate IT (per NAIC guidelines)
  - Examination's senior level auditor is scheduled on-site continuously throughout the entire examination
  - Senior auditor has previous experience in auditing insurance companies
  - Total project staff hours for completion of examination
- Time:
  - Complete within 180 days or less from date assigned
  - Estimated Date of Completion
- Total Price

2. Acceptance

2.1 Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

Once DIFS staff has determined that the Contractor's master work-papers (supporting papers and final report) have been completed within NAIC guidelines and the Contractor has provided all deliverables required of the individual second tier RFPs, DIFS will authorize final payment.

3. Staffing

3.1 Contractor Representative

The Contractor must appoint one individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

Contractor's Representative:
Mark E. Laccetti, CPA, CGMA
Partner
Baker Tilly Virchow Krause, LLP

Philadelphia Office
One Liberty Place
1650 Market Street, Suite 4500
Philadelphia, PA 19103
Tel: (215) 557-2217; Fax: (888) 264-9617; Mobile: (215) 519-3872
Mark.laccetti@bakertilly.com

The Contractor must notify the Contract Administrator at least 10 calendar days before removing or assigning a new Contractor Representative.

3.2 Work Hours
The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

3.3 Key Personnel
The Contractor must appoint one individual who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours.

Contractor's Key Personnel must be on-site or available at during the following times: Monday – Friday 7:00 a.m. to 6:00 p.m. EST.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.
It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be $25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
(ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the $25,000.00 credit specified above, Contractor will credit the State $833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total

Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed $50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

Contractor Key Personnel is as follows:

Individual(s) who will provide services:	Employee level	Professional Certification	Function	Location
Mark Laccetti	Partner	CPA, CIGMA	Supervisory	Philadelphia, PA
Les Schott	Partner	CPA, CFE	Supervisory/EIC	Baltimore, MD
Jeff Krull , Partner	Partner	CPA, CISA	IT Supervisory	Philadelphia, PA
Jim Stangroom,	Managing Director	CPA	Supervisory/EIC/ Investment Specialist	Baltimore, MD
Kevin Sullivan	Director	CPA	Supervisory/EIC	New York, NY
Jim Morris	Senior Manager	CPA, CFE, CGMA, CICA	EIC/Reinsurance specialist	Baltimore, MD
John Romano	Senior Manager	CPA, CFE	EIC/Investment specialist	Philadelphia, PA
Andrew Wittig	Senior Manager	CISA, CIA	IT Manager	Reading, PA
Phil Schmoyer	Senior Manager	CFE, CISA	EIC/IT Manager	Philadelphia, PA
Michelle Blau	Senior Manager	CPA	EIC/Lead manager	New York, NY
Ian Staab	Manager	CISA	IT Manager	Pittsburgh, PA
Richard Sowalsky	Manager	CISA	IT Manager	Philadelphia, PA
John Shofran	Manager	CFE	Examiner	Philadelphia, PA
Phil Talerico	Senior	CPA	IT/Examiner	Baltimore, MD
Taylor Tommasino	Senior	CPA, CISA	IT/Examiner	Philadelphia, PA
Bridget Reilly	Senior	NA	Examiner	New York, NY
Eric Cortese	Senior	NA	IT/Examiner	Philadelphia, PA
Jennifer Cox	Senior	NA	Examiner	Philadelphia, PA
Jon Kelly	Senior	NA	Examiner	Baltimore, MD
Jim Bodalski	Senior	CPA	Examiner	Philadelphia, PA
Katlyn Andrews	Staff	NA	Examiner	Philadelphia, PA
Changyi Song	Staff	NA	Examiner	Baltimore, MD

3.4 Organizational Chart
Reference chart in 3.3 above.

3.5 Disclosure of Subcontractors
If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:
The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Contract Activities that will be performed or provided by the subcontractor. Of the total Contract, the price of the subcontractor's work.

3.6 Security
The Contractor will be subject the following security procedures:

The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) ensure the security of State facilities, and (b) perform background checks. The State may require the Contractor's personnel to wear State issued identification badges.

4. Project Management

4.1 Project Plan

1. Contractor's sample project plan with proposal including details in sections 1.2.B and 1.2.C.1.t is as follows:

Approach	Estimated Timeframe (week beginning 2015)
Phase 1: Understand the Company	
Visit DIFS for review of the files on the Company and to meet with the EIC, Chief Examiner, and Risk Manager and/or Financial Analyst prior to the beginning of the examination. Review the updated DIFS Risk tracker and discuss relevant issues.	June 15
Confirm start date, staffing, and scheduling.	June 2015
Conduct analytical and operational reviews based on 2014 data to assist in understanding the Company.	June 15
Review Exhibit B and C responses.	June 22
Schedule a kickoff meeting with the Company discussing DIFS specific procedures and coordination with the Departments if applicable.	July 6/July 20
Conduct IT general computer controls/Exhibit C Review procedures. The prior examination scoping document, risk assessment, and documentation obtained by our team will be leveraged extensively and many of the procedures will entail obtaining updates and focusing on changes to systems and current trends such as cybersecurity, cloud computing, and disaster recovery plans.	June 15 – September 30
Gain an understanding of changes in the corporate governance and audit function since the prior examination.	July 20 – August 17
Confirm key activities and update the prior examination approach as necessary	July 20 – August 31

Complete the Exhibit E – CPA Audit Checklist to ensure the audit function is adequate and relevant work papers can be relied upon for examination efficiencies.	August 2015 (depends upon the speed and response of CPA, their external auditors)
Conduct consideration of fraud procedures	July – August 2015
Conduct market conduct testing	July – August 2015
Conduct Michigan compliance procedures	July – August 2015
Financial Reporting	July – August 2015
Address procedures related to commitments and contingencies, management control, fidelity bond and insurance coverage, Territory and Plan of operation, Risk Based Capital and non-monetary transactions, and protection of financial and health information procedures.	July – August 2015
The examination team will leverage off of the work of prior examination and the in house financial analyst where applicable.	June – November 2015
Phase 2–4: Matrix Preparation	August – October 2015
Review and update key risks applicable to the Company based on documentation from the prior examination.	August – October 2015
Utilize C level interviews, internal audit , SOX (USA) , ICOFR (Canada), and planning procedures to assist in identification of risks	August – October 2015
Assess inherent risk based on qualitative and quantitative factors for likelihood and impact and confirm with EIC	August – October 2015
Update the planning memorandum	August – September 2015
Conduct walkthroughs and identify controls for each risk identified in Phase 2	August – September 2015
Test controls where deemed appropriate, effectively designed and efficient	August – October 2015
Conduct residual risk assessment	August – October 2015
Communicate with EIC throughout the process	June 15, 2015 – November 30, 2015
Phase 5	
Details of the approach would be determined based on the inherent risks identified, results of control testing and availability of internal audit/external audit documentation as well as the outcome of our IT Exhibit C Review. Generally for a company of this size, with its history, a stable control environment should be expected. In addition no material issues were noted based on the SOW that would affect reliance on automated controls.	September – October 2015. The focus will be on ensuring CPA audit work-papers are received and scanned prior to September 2015 to allow the September and October timeframes of incorporation and individual testing where necessary.
Phase 6–Phase 7	
Complete the wrap up procedures that include subsequent events, prioritization and supervisory plan, communication logs and other required procedures.	September – October 2015
Complete the Examination Report and Management letter	October – November 2015
Hold an exit conference with the Company.	November 2015

Baker Tilly's analytical capabilities are exemplified in several other recent engagements. We performed extensive and complex analyses for the Maryland Insurance Administration to determine whether the nonprofit health plan affiliates of the CareFirst BlueCross BlueShield group exhibited indications of excess surplus. This involved the ability to decipher actuarial modeling, to perform peer analysis, and to understand the company and risks, and to relate those risks to surplus needs. We were also engaged by the Iowa Insurance Department to perform a similar analysis relative to Wellmark Inc. More recently, we were engaged by the Maryland Insurance Administration to determine the financial benefits provided to the State's workers' compensation insurance fund since its inception in 1914. This involved to ability to construct complex models to calculate the value of State support. Baker Tilly was also engaged by the U.S. Department of Health and Human Services to perform data analysis and to develop a financial analysis program that is designed to help ascertain the compliance by health insurers nationwide with regulations regarding minimum medical loss ratio requirements.

The analysis process covers a broad range of situations and can include extensive customized reviews of unusual transactions and corporate reorganizations. Baker Tilly has the fundamental requirements to perform well in this area, including broad experience in all segments of the industry, the ability to work as a member of a crossdisciplinary team that includes State personnel and others, such as the State's counsel, and the ability to communicate, where appropriate, with personnel from the subject insurer so as to obtain the necessary information and an adequate understanding of the facts and circumstances surrounding the company. We excel at taking complex problems and developing practical solutions through the creative approach we bring to every assignment.

The State may require assistance with a broad span of tasks that involve deep knowledge by both industry segment (property & casualty, life, health, etc.) as well as functional knowledge. The depth and breadth of our skills and experience in the financial analysis of insurers can be of great assistance to the State for the following types of tasks often handled by the financial analysis unit:

- General financial analysis
- Corporate records review
- Specific investment issues
- Review of surplus notes, certificates of contribution, and guaranty capital transactions
- Reinsurance review
- Review of company special filings
- Review of mergers, acquisitions and conversions
- Review of holding company transactions
- Review of RBC plans
- Review of troubled company situations

The tasks listed above will frequently overlap or in the pursuit of one task, another becomes necessary. For example, in the process of completing a general financial analysis, it may well become necessary to perform a reinsurance review and/or a review of specific investment issues. Reviewing an RBC plan can easily involve many of the above tasks. This is where Baker Tilly is uniquely qualified to serve the State. Our professional team has extensive experience in all aspects of financial analysis.

2. The Contractor will carry out this project under the direction and control of the Program Manager.

3. Within five (5) business days of a Second Tier proposal award, the Contractor must submit to the Program Manager for final approval a detailed project plan. This final project plan must be in agreement with the Contractor's proposal and accepted for Contract.

4.2 Meetings

The Contractor must attend the following meetings:

- Project status meeting
- Post examination meeting
- Final report conference meeting

The State may request other meetings, as it deems appropriate.

4.3 Reporting
This information will be requested in individual Second Tier RFPs.

5. Ordering
5.1 Authorizing Document
The appropriate authorizing document for the Contract will be purchase order and/or blanket purchase order.

6. Invoice and Payment

6.1 Invoice Requirements
All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. **Overtime, holiday pay, and travel expenses will not be paid.**

6.2 Payment Methods
a. The State will make payment for Contract Activities monthly by lump sum fixed price payment, based upon DIFS review of hours worked and sufficent progress.

c. The State has the right to hold back, as a retainage, an amount equal to twenty-five percent (25%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back must be released to Contractor after the State has granted Final Acceptance.

d. The Contractor will be held to the price quoted in the second tier RFP response. No additional funds will be approved and paid to the Contractor for delays in the examination because of company delay of providing needed examination information unless the Contractor can provide sufficient documentation to demonstrate the delays. The delays must be a significant portion of the information such that the Contractor's staff is not able to remain productive. Also, the Contractor must be able to demonstrate that its staff could not be temporarily reassigned during any such lulls in receiving documentation. DIFS does not anticipate any delays and would work with the Contractor and company to ensure delays will not occur.

e. DIFS will pay for all Financial Examination services by the Contractor that are provided according to the terms of this Contract. No charges shall be submitted to the regulated insurance company being examined, unless otherwise directed by DIFS.

STATE OF MICHIGAN

Contract No. 071B6600056
Financial Examination/Analysis Services – Pre-Qualification

EXHIBIT B
RESERVED

STATE OF MICHIGAN
Contract No. 071B6600056__
Financial Examination/Analysis Services – Pre-Qualification

EXHIBIT C
PRICING

1. Pricing will be finalized in accordance with the second tier, competitive selection process per Exhibit A.

2. Pricing must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).

3. Pricing Table

Staff Role	Hourly Rates
Partner	$275
Director	$225
Senior Manager	$200
Manager	$165
Senior	$140
Staff	$112