



STATE OF MICHIGAN
Department of Transportation
MDOT-Purchasing

Request For Proposal No. [0711](#)
([Drug and Alcohol Testing and Training Contract](#))

Buyer Name: [Terry Harris](#)
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Estimated Timeline:

Key Milestone:	Date:
Issue Date	3/26/2013
Pre-Bid Meeting/Site Visit	NA
Questions Due	4/9/2013
Bid Due Date	4/30/2013
Anticipated Contract Start Date	7/1/2013

RFP Checklist for Bidder Proposal Contents and Responsiveness

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

Article 1 and Attachment A:

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

_____ Price Proposal, Article 1, Section 1.061, for the proposal has been included in Bidder's proposal, according to the instructions laid out in Article 3 and using the format in Attachment A (if required in 1.061). If the RFP requires that pricing be sealed separately, these directions must be followed, or the proposal may be viewed as noncompliant.

Article 2:

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

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

Article 3:

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

_____ The complete proposal was submitted to the appropriate location and on time, with one (1) signed original, the appropriate number of additional copies, and the instructed number of copies of the electronic version, on 3.5-inch disks or CD. Hard copy and electronic versions of pricing were sealed separately, if instructed to do so in Article 3.

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

Article 4:

_____ Responses have been provided for all items requested in Article 4 and includes signature by an individual authorized to legally bind Bidder's company.

Other:

_____ The Certifications and Representations have been completed and stored in the Bidder's Bid4Michigan.com account.



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DEFINITIONS

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

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Bidder(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

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

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

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

MDOT means the Michigan Department of Transportation

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

OPT means the Office of Passenger Transportation

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

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



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

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

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

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

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

SLA means Service Level Agreement.

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

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

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

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

Waste Prevention means source reduction and reuse, but not recycling.

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

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

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



Article 1 – Statement of Work (SOW)

NOTICE TO ALL BIDDERS: It is the bidder's responsibility to complete each bidder response section, in each article, completely and in detail. No assumptions should be made that the State is aware of any bidder's capabilities, staffing, prior experience, past performance or any other required information. The evaluation will be based on the information submitted with the proposal according to the terms of the RFP.

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

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

1.010 Project Identification

1.011 Project Request

This Request for Proposal is for the purpose of obtaining services to provide compliance assistance in regard to the U.S. Department of Transportation and the Federal Transit Administration (FTA) drug and alcohol regulations to the Michigan local bus transit agencies and the Michigan Department of Transportation (MDOT). This proposal is for services which include: 1) a drug and alcohol consortium and 2) education and training services. The consortium will provide: consortium management of drug and alcohol testing, resources identification and coordination, oversight and quality control, record keeping, and FTA reporting assistance (Management Information System Report). Training services will provide educational training, consultation, and policy development and review to the transit agencies and MDOT.

This is an RFP for Drug and Alcohol Testing and Training. This is a formal request to prospective Bidders to solicit proposals. Bidders must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

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

1.012 Background

USDOT considers one of their highest priorities to be the safety of public transportation. Alcohol and drug abuse within the transit industry can have a significant negative effect on that goal. Therefore, in order to minimize this effect, several substantial pieces of legislation were passed. These pieces of legislation attempt to eliminate and control drug and alcohol impaired work performance largely by requiring drug and alcohol policies, drug and alcohol testing, and monitoring of possible drug or alcohol impaired work performance.

The transit industry is affected by many USDOT legislative sources including but not limited to the National Highway Traffic Safety Administration (NHTSA), FTA, Federal Motor Carrier Safety Administration (FMCSA), U.S. Coast Guard (USCG) and Federal Railroad Administration (FRA).

In addition to the current legislation to which the transit industry must adhere, any additional laws which become in effect throughout the remainder of the contract must be identified and incorporated into the program.

Problem Statement

The public transit industry is heavily regulated. Keeping abreast of all the relevant legislation is a challenge. Transit management must make many compliance related decisions for their organizations. These decisions can have serious organizational consequences, such as increasing risk and liability, requiring major policy adjustments, seriously impacting public relations (and consequently local funding), and affecting Union relations or bargaining issues.



Implementation of the federal drug and alcohol legislation has created a challenge for transit providers in a time of increasing needs and decreasing resources. These transit providers have limited time and funding to administer the mandated organizational drug and alcohol programs. The required outside resources that must be identified, trained, and monitored, as well as the many procedural details that must be correctly followed to be in compliance, is a formidable challenge.

There are approximately 80 transit agencies statewide that must comply with these federally mandated drug and alcohol programs. In addition to providing technical assistance to these agencies, MDOT is legally responsible for recipients of FTA Section 5311 funds to be in compliance with the regulations.

It is critical that the third-party administrator be extremely knowledgeable of and able to analyze, as well as explain all of the legal documents which must be carefully followed by each transit agency in order to be considered in compliance by the U.S. Department of Transportation, as well as the State of Michigan and any other current/future legislation. This includes overall general guidelines, as well as the myriad of specific requirements which are stated or indicated. MDOT will not provide regulatory information to the third-party administrator. It is the responsibility of the third-party administrator to identify and access all of the federal and state legislation which is relevant to the drug and alcohol compliance programs for the Michigan transit agencies.

Project Goal

The goal of this project is to ensure legally sound compliance for all the Michigan transit agencies regarding the USDOT and FTA Drug and Alcohol Testing Regulations.

Project Objectives

1. Minimize the compliance costs, including drug and alcohol testing.
2. Simplify the compliance procedures.
3. Identify and provide compliance resources.
4. Reduce state administrative involvement.
5. Comply with reporting for transit agencies receiving FTA Section 5311 federal funds.
6. Provide training and education on federal drug and alcohol regulations.

1.020 Scope of Work and Deliverables

1.021 In Scope

The purpose is to secure the services of a third party administrator to provide two categories of service. Cost will be covered by either the individual transit agencies or MDOT, depending on the type of service. The two services are:

A. **Consortium Program:** Administer a statewide drug and alcohol consortium program to participating transit agencies.

B. **Training and Oversight:** Provide training, expertise, compliance monitoring, and policy review/approvals to all Michigan transit agencies and MDOT.

A. Consortium Program:

(Transit agencies will be responsible for service fees, except as noted.)

1. Collection Site identification, training, and quality control

- a) The Contractor will work with each transit agency to identify local collection sites which meet its needs, making every effort to keep the current resources unless unacceptable. Each transit agency will have available to them collection site(s) with both urine collection personnel as well as breath alcohol technicians unless there are not high quality dual testing sites in existence in the geographical area. The Contractor will also train collection site personnel, and do ongoing quality control. An unsatisfactory collection site should be reported to the transit agency and MDOT.



- b) The Contractor will also, if needed, serve as a liaison between the collection sites and the transit agencies, identifying, recommending, and replacing collection sites as needed. In most cases, collection sites should be in the same county as the transit agency office where the employee is located.
- c) Some collection sites must be available 24 hours a day. If a collection site is needed outside the normal business hours of 8:00 a.m. and 5:00 p.m. (usually post-accident or reasonable suspicion) the Contractor will be available and able to advise the collection site of the arrival of the employee at the transit agency's request. This service must be provided 24 hours a day, 7 days a week with a toll free telephone line.
- d) The Contractor will provide Breath Alcohol Technician (BAT) program management services for quality control.
- e) Contractor will provide transit agencies support during conflicts, disputes, or a typical situations, i.e., positives, refusals, return-to-duty/follow-up testing.

Bidder Response to Task:

2. Medical Review Office (MRO) identification, receipt and communication of test results, coordination, and quality control.

- a) The Contractor will identify medical review officer(s) and provide certifications and credentials.
- b) The Contractor will receive test results from the MRO(s) and communicate them appropriately to the transit agency representative.
- c) The Contractor will also ensure that the necessary services occur in a timely and acceptable manner.

Bidder Response to Task:

3. Laboratory identification, coordination, and quality control

- a) The Contractor will identify laboratories which meet USDOT criteria, and coordinate services as well as provide quality control. The laboratory must process specimens in a timely manner.
- b) The Contractor will also negotiate a competitive pricing system (available due to the volume) with the laboratories for the transit agencies to pay for their employee testing.

Bidder Response to Task:

4. Testing – Additional specific services to assist with the following required types of drug and alcohol testing are:

- c) Random – Maintain and generate employee numbers for quarterly testing, with a separate pool for each transit agency if desired, notify each transit system of each draw, and follow-up with reminder calls if test results are not received within a reasonable time after notification.
- d) Follow-up – Schedule and notify transit agencies according to Substance Abuse Professional's guidelines, track, remind if test results are not reported within a reasonable time after notification, reiterate mandatory procedures as required by drug regulations should the employee fail a drug and/or alcohol test.
- e) Post-accident – Consult by telephone with transit agency management at their request, regarding individual cases.
- f) Reasonable suspicion – Consult by telephone with transit agency management at their request, regarding individual cases.
- g) Return to duty – Reiterate mandatory procedures according to regulations should the employee fail the drug and/or alcohol test.
- h) Pre-employment – Reiterate mandated procedures if applicant fails the test.



- i) **Blind performance** – Provide, submit, track, and do quality control (***Fees will be covered by MDOT***).

Bidder Response to Task:

5. **Record keeping/reporting** – The Contractor will a) maintain and provide for each transit agency the necessary testing records, and, b) provide for each transit agency the testing statistics needed for annual FTA reporting.

Bidder Response to Task:

6. **Billing** - Contractor will submit periodic invoices to the transit agencies and collect fees for their drug testing, including laboratory and MRO charges.

Bidder Response to Task:

7. **24-hour toll free consultation service** – The Contractor will make this service available to transit agency managers in reference to drug or alcohol program questions and concerns that may arise. The Contractor must be able to give recommendations and answer questions about legally correct compliance procedures to be followed regarding the drug program, provide expert advice as requested by individual transit agencies regarding their programs and procedures as well as Union/Management issues as needed. Included in this assistance must be solutions regarding reasonable cause referrals.

Bidder Response to Task:

8. **Program Quality** - Recommend modifications to improve efficiency/effectiveness/quality of compliance program to transit agencies and to MDOT. Provide regular updates on industry to transit agencies and to MDOT.

Bidder Response to Task:

9. **Litigation Assistance** – The Contractor will, for a fee, provide legal representation and expert testimony as requested by individual transit agencies.

Bidder Response to Task:

10. **Audit Assistance** – The Contractor will, for a fee, provide audit assistance as requested by individual transit agencies.

Bidder Response to Task:

11. **Tracking** - Keep MDOT informed of deliberate repetitive non-compliance if it continues after correction and assistance has been given. This applies to transit agencies, as well as any of the resources utilized, such as collection sites. (***Fees will be covered by MDOT***).

Bidder Response to Task:



B. Training and Oversight:

(MDOT is responsible for service fees)

1. Consultation/Expert Advice.

Provide "expert" advice, as requested by MDOT regarding programs and procedures. This includes:

Regulation Update/Bulletins – The Contractor must develop (or obtain from other resources) and distribute timely written bulletins for each transit agency regarding any relevant changes the in law as needed as well as any clarifications which may be needed, based on identified areas of confusion. These bulletins need to receive MDOT approval prior to distribution.

Programs and procedures advice – The Contractor will provide expert advice as requested by MDOT regarding individual transit agencies' programs and procedures.

Clarify regulations – The Contractor will clarify regulations jointly with MDOT.

Union/Management issues – The Contractor will advise transit agencies and MDOT regarding Union/Management issues as needed.

Legislative changes – The Contractor will keep abreast and inform agencies and MDOT of any legislative changes.

General Consultation – The Contractor will consult with transit agencies and MDOT regarding areas of interest as needed.

Bidder Response to Task:

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2. Management/Supervision Education and Training

The Contractor will provide training sessions as deemed necessary by MDOT or the trainer. These sessions will focus on the legal requirements, as well as the recommended strategy for compliance. The Contractor must show they have a qualified, experienced trainer with drug/alcohol program management expertise and experience to teach the participants about strategies for compliance activities which maximize organizational efficiency and effectiveness. This training must include development of the supervisory skills needed for their role, including intervention techniques. The trainer provided must be a nationally recognized expert in FTA drug and alcohol regulations and training. They must have conducted training at local, state and federal levels, and have experience with FTA drug and alcohol programs and training. Trainer must also have knowledge of Part 655, Part 40, Rx/OTC, new FTA initiatives and interpretation of those initiatives. All training sessions agendas and materials will be reviewed and approved by MDOT prior to scheduling. Training will not be limited to, but will include the following topics or any other topic MDOT or the trainer determines is necessary:

Substance Abuse Management Training. The Contractor will provide a Substance Abuse Management training course geared towards new and experienced transit managers. The training will include comprehensive overview updating, drug and alcohol testing procedures, procurement of testing services, employee and supervisor training, and recordkeeping, among others. The module will be interactive among the instructor and the participants. In addition, the session will include exercises to facilitate mastery of the concepts.

Reasonable Suspicion, including Train-the-Trainer Workshop. The Contractor will provide a Reasonable Suspicion Training course. The FTA Drug and Alcohol Testing Program regulation states that an employer must require a covered employee to submit to a drug and alcohol test when the employer has reasonable suspicion to believe that the employee has used a prohibited drug or misused alcohol as defined in the regulations. The reasonable suspicion determination must be made by a supervisor that is trained in detecting the symptoms of drug use and alcohol misuse. This training module is provide for transit system employees that may be responsible for making



reasonable suspicion determinations. The class participants will be trained in the facts, circumstances, physical evidence, physical signs and symptoms or patterns and/or behaviors that are associated with prohibited drug use or alcohol misuse. Train-the-trainer information will also be provided for transit management staff who will use the material to train their own supervisors.

Prescription and Over-The-Counter Medications. The Contractor will provide Prescription and Over-The-Counter Medication use in the Transit Industry training. This training module is designed to increase awareness of the potential hazards of prescription and OTC medications in the transit industry. The presentation summarizes the FTA challenge to the transit industry, employer responsibilities, employee responsibilities, policy recommendations, model procedures for implementing the policy, and training efforts within the transit industry. An appendix to the presentation summarizes major classifications of Rx and OTC medications and possible side effects that could adversely affect an employee’s ability to safely perform safety-sensitive job duties.

Post-Accident Drug and Alcohol Testing. The Contract will provide a training module geared toward decision making following a transit accident in which drug and alcohol testing is required. The course describes in detail the FTA regulation concerning post-accident testing as well as forms and documentation required to ensure the transit system maintains compliance. The course also includes a real-life scenario section where participants must decide if a post-accident test is required based on accident reports.

Audit Training. The Contractor will provide a training module geared toward the three phases of audit reviews (Pre-Audit, Audit and Post Audit follow-up process). The training will include comprehensive overview of program requirements and recommended strategy for compliance during an audit. Preparation of transit agencies on FTA questions on Policy Manual, Drug and Alcohol Program Manager, Records Management, Urine Collection, Saliva Technician, Breath Alcohol Technicians, MRO, TPA and SAP. The module will be interactive among the instructor and the participants. In addition, the session will include exercises to facilitate mastery of the concepts.

Training sessions are to be biennially, at a minimum. Each training session shall be held at 3 locations in Michigan. All topics do not need to be covered at each event, but do need to be covered at least every two years.

Bidder Response to Task:

3. Compliance Monitoring and Policy Review/Approval

Compliance Monitoring will be done on an on-going basis, in a timely fashion. Quarterly reporting dates will be set by MDOT.

Policy Review/Approval – The Contractor will ensure all MDOT subrecipients’ Drug and Alcohol plans are in compliance with current USDOT (NHTSA, FTA or FHWA) regulations.

Bidder Response to Task:

4. Account Management

Consortium membership – Annually, the Contractor will provide a formal open enrollment period for transit agencies to join or continue membership in the consortium for the next calendar year. This may include developing and mailing brochures during the open enrollment period.

FTA Reports – The Contractor will review and verify (for accuracy) on-line FTA annual drug and alcohol testing reports from Section 5311 recipients, as well as advise as needed.

Bidder Response to Task:



1.022 Work and Deliverable

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

The following estimates are provided by MDOT and shall be used as the basis for pricing and making the award. While these numbers will be used for the basis of making an award, the actual numbers may vary during the terms of the contract. Joining the MDOT consortium is an option, and not all transit agencies will elect this option. Except where specified, numbers represent totals for a one-year period of the consortium.

- Number of safety sensitive employees covered 1100.
- Number of random selection pools: up to 45
- Number of blind performance tests: 25
- Location of organizations affected: Statewide
- Number of breath alcohol tests: 150
- Number of drug tests: 600
- Number of collection sites: 100
- Number of FTA/FMCSA transit agencies 80
- Number of agencies for Annual Promotion Campaign: 80
- Number of requests from transit agencies for consultation, "expert" advice, program modification recommendations: 200 @ 1 hour each.

Training sessions are to be annually at a minimum consistent with price sheet Attachment A. Each training session shall be held at 3 locations in Michigan. All topics do not need to be covered at each event, but do need to be covered at least every two years. MDOT and the trainer will agree on training dates which will be at least 60 days prior to the training.

Bidder Response to Task:

Compliance Monitoring - The Contractor will provide within 60 days of the executed contract for MDOT approval a detailed plan of the quarterly compliance monitoring of all MDOT transit agencies to ensure they meet USDOT (NHTSA, FTA or FHWA) Drug and Alcohol program requirements. The Contractor will review and verify compliance of the USDOT Drug and Alcohol program for each Michigan subrecipient and report all findings to MDOT quarterly.

Bidder Response to Task:

Policy Review/Approval model drug and alcohol policies will be provided to new transit agencies. Completed policies will be submitted to Contractor for review and approval. Consult with agencies on an on-going basis regarding their policy as needed or as regulation changes.

Bidder Response to Task:

Account Management will be done on an on-going basis. The consortium membership drive is to be conducted annually to allow transit agencies to continue or join for the next calendar year. FTA Reports are due at the beginning of each calendar year following the year the reporting is for. Reporting is now done on-line

Bidder Response to Task:



1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Identify personnel requirements by number and skill including names and proposed physical location of executive and professional personnel who would be employed in this project. Indicate through the use of organizational diagrams and/or narrative statements, the proposed project manager and staff support, subcontracting and specific functions of each assigned individual. Also provide detailed qualifications of employees or subcontractors who will be assigned to this project.

MDOT reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project.

Bidder Response:

1.040 Project Plan

1.041 Project Plan Management

The Contractor shall carry out this project under the direction and control of MDOT. There will be open communication between the contractor and the MDOT project coordinator.

Within ten (10) working days after the award of the contract, the Contractor shall submit a finalized work plan to the project coordinator for approval. The work plan shall include all tasks to be completed, time frames for each task, and personnel assigned to each task.

The work shall be carried out to the satisfaction of MDOT. All correspondence and major work elements shall be provided for MDOT to review prior to finalizing, and be acceptable to MDOT. MDOT will not be a legal information source for the Contractor regarding the drug regulations. Instead, it is imperative that the Contractor be an expert in the content of current related legislation, as well as any future developments. The work must be accomplished by staff acceptable to MDOT

Bidder Response:

1.042 Reports

MDOT will require quarterly random reports plus other reports using data being collected by the Contractor. MDOT will require a summary of compliance monitoring results each quarter.

Bidder Response:

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

The criteria will be used by MDOT to determine Acceptance of the Services and/or Deliverable provided under an executed Contract.

The work shall be carried out to the satisfaction of MDOT. All correspondence and major work elements shall be provided for MDOT to review prior to finalizing, and be acceptable to MDOT. MDOT will not be the legal information source for the Contractor regarding the drug regulations. Instead, it is imperative that the Contractor be an expert in the content of current related legislation, as well as any future developments. The work must be accomplished by staff acceptable to MDOT.

1.052 Final Acceptance

Final acceptance will occur upon successful completion of the final contract year's reporting requirements.



1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Price List, see Attachment A.

1.062 Price Term

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

1.063 Tax Excluded from Price

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

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

1.064 Holdback – Deleted, Not Applicable

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP - Deleted, Not Applicable



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 2 years beginning July 1, 2013 through June 30, 2015. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

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

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

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

2.007 Headings

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



2.008 Form, Function & Utility

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

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Michigan Department of Transportation, Purchasing.

2.022 Contract Compliance Inspector (ICC)

After MDOT Purchasing receives the properly executed Contract, it is anticipated that MDOT Purchasing will consult with the Office of Passenger Transportation and direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by MDOT.** The CCI for the Contract is:

Terry Harris
 Purchasing
 Michigan Department of Transportation
 Van Wagoner Building, 4th Floor
 Lansing, MI 48933
 Email: harrist@michigan.gov
 Phone 517-335-2507
 Fax 517-373-9466

2.023 Project Manager

The following individual will oversee the project:

Marcele Edington, Program Manager]
 Michigan Department of Transportation
 425 W. Ottawa Street
 P.O. Box 30050
 Lansing, MI 48909
 edingtonm@michigan.gov
 Phone: (517) 373-7645
 Fax: (517) 373-7997



2.024 Change Requests

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

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

Change Requests:

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

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

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

2.028 Covenant of Good Faith

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

**2.029 Assignments**

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

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

2.030 General Provisions**2.031 Administrative Fee and Reporting – Deleted, Not Applicable****2.032 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and 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 from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.033 Contract Distribution

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

2.034 Permits

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

2.035 Website Incorporation

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

2.036 Future Bidding Preclusion

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

2.037 Freedom of Information

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").



2.038 Disaster Recovery

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

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

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

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

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

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 Pro-ration

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



2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves 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 must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must 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 must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the 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"). Unauthorized Removals 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. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

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

2.064 Contractor Personnel Location – Deleted, Not Applicable

2.065 Contractor Identification – Deleted, Not Applicable

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to



contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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

2.072 State Consent to Delegation

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

2.073 Subcontractor Bound to Contract

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

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.



2.080 State Responsibilities

2.081 Equipment

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

2.082 Facilities – Deleted, Not Applicable

2.090 Security

2.091 Background Checks

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

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

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 72 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Standard

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with MDOT policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.



2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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



2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of 7 years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.113 Examination of Records

(a) The State, upon 10 days' notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract any time during the Audit Period. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, MDOT or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to MDOT or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

2.114 Audit Resolution

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

2.115 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and



workman-like manner and must meet the performance and operational standards required under the Contract.

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

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

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

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

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to MDOT.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty - Deleted, Not Applicable

2.126 Equipment to be New

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts



that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, is considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items must remain consistent for the term of the Contract, unless MDOT has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

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

2.130 Insurance

2.13.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

(g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three (3) years following the termination of this Contract.

(h) The Contractor must provide, within five (5) business days, written notice to MDOT if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.

(i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(j) The Contractor is responsible for the payment of all deductibles.

(k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.



(l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

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

(i) Commercial General Liability

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;
 \$2,000,000 Products/Completed Operations Aggregate Limit;
 \$1,000,000 Personal & Advertising Injury Limit; and
 \$1,000,000 Each Occurrence Limit.

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

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

(ii) Umbrella or Excess Liability

Minimal Limits:

\$10,000,000.00 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (i), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(iii) Motor Vehicle

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

(iv) Hired and Non-Owned Motor Vehicle

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

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

(v) Workers' Compensation Insurance

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.



For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

(vi) Employers Liability

Minimal Limits:

\$100,000 Each Incident;
\$100,000 Each Employee by Disease
\$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

(vii) Employee Fidelity (Crime)

Minimal Limits:

\$1,000,000 Employee Theft Per Loss

Deductible Maximum:

\$50,000 Per Loss

Additional Requirements:

Insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

(viii) Professional Liability (Errors and Omissions)

Minimal Limits:

\$3,000,000 Each Occurrence
\$3,000,000 Annual Aggregate

Deductible Maximum:

\$50,000 Per Loss

(ix) Medical Malpractice

Minimal Limits:

(Small Provider) \$200,000 Each Occurrence
\$600,000 Annual Aggregate

(Large Provider) \$1,000,000 Each Occurrence
\$3,000,000 Annual Aggregate

Deductible Maximum:

\$5,000 Each Occurrence

(x) Cyber Liability

Minimal Limits:

\$1,000,000 Each Occurrence
 \$1,000,000 Annual Aggregate

Additional Requirements:

Insurance should cover (a) unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) Transmitting or receiving malicious code via the insured's computer system; (c) Denial of service attacks or the inability to access websites or computer systems.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

(xi) Property Insurance

Property Insurance covering any loss or damage to the State-owned office space used by Contractor for any reason under this Contract, and the State-owned equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The State must be endorsed on the policy as a loss payee as its interests appear.

2.13.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.13.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.13.3 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide the Michigan Department of Transportation with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.13.1, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

2.140 Indemnification**2.141 General Indemnification**

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts.



This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

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

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

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to



defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

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

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

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

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

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or



regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

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

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

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

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as



otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed (60) days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

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



2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

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

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience



under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

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

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, MDOT, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.



2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage – Deleted, Not Applicable

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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



The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

2.232 Call Center Disclosure

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



2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

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

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations:
 - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
 - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.



(c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

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

2.244 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the



unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

- (a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.
- (b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.
Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

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

2.253 Testing

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



and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

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

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the



Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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

2.257 Process for Approval of Physical Deliverables

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

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards**2.271 Existing Technology Standards**

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--00.html>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

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

2.274 Electronic Receipt Processing Standard

All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

2.280 Extended Purchasing Program**2.281 Extended Purchasing Program - Deleted, Not Applicable**



2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

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

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

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

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply



with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



Article 3 – Bid Process and Evaluation Criteria

3.010 Introduction

3.011 Pre Bid Meetings - Deleted, Not Applicable

3.012 Communications

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

3.013 Questions

Questions concerning the RFP are to be submitted, in writing, no later than **3:00 p.m. on April 5, 2013 to:**

Terry Harris
MDOT, Purchasing
Email: Harrist@michigan.gov

All questions must be submitted in writing and sent as an attachment in Microsoft Word or Rich Text Format (RTF). Changes to the RFP and answers to questions will be prepared as an addendum and posted on the State's web site under the corresponding bid number: www.michigan.gov/buymichiganfirst. The posted addendum officially revises and supercedes the original RFP. The addenda will be posted approximately April 10, 2013.

3.020 Award Process

NOTICE TO ALL BIDDERS: It is the bidder's responsibility to complete **each** bidder response section, in **each** article, **completely** and **in detail**. No assumptions should be made that the State is aware of any bidder's capabilities, staffing, prior experience, past performance or any other required information. The evaluation will be based on the information submitted with the proposal according to the terms of the RFP.

3.021 Method of Evaluation

In awarding the Contract, proposals will be evaluated by a Joint Evaluation Committee (chaired by MDOT Purchasing).

3.022 Technical Proposal Evaluation Criteria

The following chart represents the scoring of the particular factors listed in order of importance:

		<u>Weight</u>
1.	Statement of Work (Article 1)	40
2.	Prior Experience (4.012) (4.014) – (4.018)	30
3.	Bidder Information (4.011)	10
4.	Staffing (1.031 & 4.013) (4.019 – 4.022)	10
5.	Financial Stability (3.043)	10
	TOTAL	100

3.023 Price Evaluation

(a) Only those proposals receiving a score of 80 points or more in the technical proposal evaluation will have their pricing evaluated to be considered for award.

(b) Evaluation of price proposals includes consideration for a Qualified Disabled Veteran Preference. 1984 PA 431, as amended, establishes a preference of up to 10% for businesses owned by qualified disabled veterans meeting the minimum point threshold for passing.

(c) The State reserves the right to consider economic impact on the State when evaluating proposal pricing. This includes, but is not limited to: job creation, job retention, tax revenue implications, and other economic considerations.



3.024 Award Recommendation

The award recommendation will be made to the responsive and responsible Bidder who offers the best value to the State of Michigan. Best value will be determined by the Bidder meeting the minimum point threshold and offering the *best combination of the factors stated in Section 3.022, and price, as demonstrated by its proposal.*

3.025 Reservations

- (a) The State reserves the right to consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.).
- (b) The State reserves the right to award by item, part or portion of an item, group of items or total proposal, to reject any and all proposals in whole or in part, if, in MDOT judgment, the best interest of the State will be so served.
- (c) The State reserves the right to award multiple, optional use contracts. In addition to the other factors listed, offers will be evaluated on the basis of advantages and disadvantages to the State that may result from making more than one award.
- (d) The State reserves the right to consider overall economic impact to the State in the final award recommendation. This includes considering principal place of performance, number of Michigan citizens employed or potentially employed, dollars paid to Michigan residents, Michigan capital investments, economically disadvantaged businesses, etc.
- (e) The State reserves the right to award to another 'best value' contractor in case the original Awardee does not accept the award. This reservation applies for all of our solicitations whether they are quotes, bids, proposals, pre-qualified or pre-registered programs.
- (f) The State reserves the right to give a preference for products manufactured or services offered by Michigan firms if all other things are equal and if not inconsistent with federal statute. (See MCL 18.1261)
- (g) The State reserves the right to disqualify any bid based on Sections 1.1 through 4.1 in the general Certifications and Representations (completed at vendor registration).

3.026 Award Decision

Award recommendation will be made by MDOT.

3.027 Protests

If a Bidder wishes to initiate a protest of the award recommendation, the Bidder must submit a protest, in writing, by 3:00 p.m. on the date stated on the notice of recommendation to award. Bidder must include the RFP number and clearly state the facts believed to constitute error in the award recommendation along with the desired remedy. More information about the Bidder protest process is available at www.michigan.gov/contractconnect; click on the "Vendor Information" link.

3.028 State Administrative Board

The State Administrative Board (SAB) must approve all contracts/purchase orders in excess of \$250,000. The decision of this Board regarding the recommendation is final; however, SAB approval does not constitute a Contract. The award process is not completed until the Bidder receives a properly executed Contract or Purchase Order from MDOT.

3.030 Laws Applicable to Award

3.031 Reciprocal Preference – Deleted, Not Applicable

3.032 Qualified Disabled Veteran Preference

1984 PA 431 establishes an up to 10%+ price preference for businesses owned by qualified disabled veterans. The Act includes a stated goal of making awards amounting to 5 percent (5%) of total state expenditures for goods, services, and construction to qualified disabled veteran-owned companies.



3.033 Independent Price Determination

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

3.034 Taxes

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

3.040 Possible Additional Considerations/Processes

3.041 Clarifications

The State may request clarifications from one (1) or all Bidders. The State will document, in writing, clarifications being requested and forward to the Bidders affected. This process does not allow for changes. Instead, it provides an opportunity to clarify the proposal submitted.

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

3.042 Past Performance

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

3.043 Financial Stability

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

3.044 Samples/Models - Deleted, Not Applicable

3.045 Energy Efficiency/Environmental Purchasing Policy

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

The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. This can be best accomplished by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that may be considered in Best Value Purchasing evaluation include: recycled content and recyclability;



energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

3.046 Pricing Negotiations - Deleted, Not Applicable

3.047 Deficiency Report and Clarification Request (DR/CR)

If the selection process described in the RFP does not lead to a viable award recommendation, significant deficiencies are identified, or changes in the technical requirements or specifications are needed, the Buyer/JEC, at its discretion, may prepare a Deficiency Report and Clarification Request (DR/CR) for each proposal determined to be in the competitive range. The DR/CR may include any changes to the original proposal to address the listed deficiencies, including alterations to the original cost proposal to address correction of the deficiencies. Bidders will be allowed to respond in writing to the DR/CR with a revised proposal. The DR/CR response must be submitted by the deadline established by MDOT.

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

3.048 Best and Final Offer (BAFO) - Deleted, Not Applicable

3.050 Proposal Details

3.051 Complete Proposal

To be considered, each Bidder must submit a COMPLETE proposal in response to this RFP, using the format specified. No other distribution of proposals is to be made by the Bidder. The proposal must state how long it remains valid. This period must be at least 120 days from the due date for responses to this RFP.

3.052 Efficient Proposal

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

3.053 Price and Notations

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

3.054 Double Sided on Recycled Paper

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

3.055 Proposal Format

The following information must be included in all proposals. Bidders must respond to all sections of the RFP. Failure to respond to every section in each Article could result in disqualification from the bidding process. Uniform Resource Locator (URL) links to information will not be considered for evaluation. The State does not control the data and cannot assure that it is static and not subject to change. We will only evaluate the materials submitted to us by the bid due date and time and in accordance with Section 3.060 *Submitting Bids and Proposals*. Proposals should be formatted to include each of the following sections, which should be clearly identified using the same format as the RFP is written in and with the appropriate headings:



Article 1 – Statement of Work – Bidder must respond to each section. **Proposal must include detailed responses to all tasks as requested in Article 1. Bidders must copy these sections, and provide Bidder's response in the area specified for "Bidder Response to Task". This area has been designed to expand as necessary**

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

Article 4 – Evaluation Information – Bidder must respond to each section

3.060 Submitting Bids and Proposals

3.061 Sealed Bid Receipt - Deleted, Not Applicable

3.062 Proposal Submission

Submit three (3) written copies of technical proposal (including one (1) clearly marked original) and copies of your **separately sealed Price Proposal** according to the following instructions, which will ensure that the integrity of the sealed bid process is protected:

Bidder's proposal should also be submitted in electronic format on a CD-ROM or flash drive. All documents and data must be created using tools that are compatible with the Microsoft Office standard desktop tools, without need for conversion. The electronic format may be saved in a compressed format. Bidders should submit in electronic format along with the number of paper copies being requested. Any items contained in the Proposal that cannot be saved in the aforementioned format should be clearly identified by the Bidder as the items that are excluded from the electronic submission. NOTE: The electronic version of the price proposal **MUST** also be sealed separately from the electronic technical proposal and clearly labeled as such. **PRICE PROPOSAL MUST BE SEALED SEPARATE FROM TECHNICAL PROPOSAL. Separately sealed pricing proposals will remain sealed until the JEC has completed evaluation of the technical proposals.**

3.063 Responses

(a) Each envelope/container submitted must contain the response to only one (1) RFP. Do not submit responses to more than one (1) RFP in one (1) envelope/container. Also, faxed bids will not be accepted unless specifically requested in writing by MDOT.

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

(c) The bid may be submitted utilizing one (1) of the methods below:

1. Bids may be delivered to the security desk of the Michigan Department of Transportation, 1st floor of the Van Wagoner Building. **Bidders must allow adequate time to check in at the security desk on the 1st Floor of the Van Wagoner Building before bid submission deadline.**
2. MDOT-Purchasing address for proposals submitted by CONTRACT CARRIER, COURIER DELIVERY, or PERSONAL DELIVERY, is:

State of Michigan
Department of Transportation
MDOT- Purchasing
4th Floor, Van Wagoner Building
425 West Ottawa Street
Lansing, Michigan 48933



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

State of Michigan
Department of Transportation
Passenger Transportation
Post Office Box 30050
Lansing, Michigan 48909

3.070 Possible Bond Requirements

- 3.071 Bid Bond – Deleted, Not Applicable**
- 3.072 Performance Bond – Deleted, Not Applicable**
- 3.073 Payment Bond – Deleted, Not Applicable**
- 3.074 Maintenance Bond – Deleted, Not Applicable**



Article 4 – Required Bidder Information

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

4.010 Bidder Information

4.011 Company Information

Company Full Legal Name:	Phone Number:
Company Address (include 9 digit zip code):	Website Address:
Legal Status (i.e. corporation, partnership, DBA):	Number of Years in Business:
State Incorporated:	Gross Annual Sales for Last 5 Years
	Year 1
	Year 2
Data Universal Number System (DUNS) #	Year 3
	Year 4
	Year 5
If licensed, provide the license number and the State in which the company is licensed:	
License	State

Federal Funding Accountability and Transparency Act (FFATA) (Public Law 109-282)

Contractors who are awarded State contracts that are funded by \$25,000 or more of federal funds are subject to FFATA reporting requirements. Although not required at the time of bid submission, if the bidder is awarded a Contract that meets the reporting requirements of the FFATA, the Contractor will be required to provide its DUNS number; parent organizations DUNS number; location and primary place of performance information, and possibly, executive compensation information. FFATA requirements and Duns information can be found at: <https://www.fsrs.gov/> and <http://www.dnb.com/>.

In the preceding fiscal year, was 80% or more of your annual gross revenues from federal awards?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, were those revenues greater than \$25 million?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes to both question above, does the public have access to information about the names and total compensation of the most highly compensated officers through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78 m(a), 78(d)) or section 6104 of the Internal Revenue Code of 1986.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If no, provide the names of the most highly compensated officers and their total compensation (cash and non-cash dollar value) earned during the preceding fiscal year (for more information see 17 CFR 229.402(c)(2)):		
Executive Name	Executive Compensation	



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

Bidder Response:

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

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

4.012 Prior Experience

Indicate the prior experience of your firm, which you consider relevant to your ability to successfully manage a contract for the services defined by this RFP. Include sufficient detail to demonstrate the relevance of this experience. Proposals submitted should include, in this section, descriptions of a minimum of three (3) qualifying relevant experiences to include project/client descriptions, costs, and starting and completion dates of projects/contracts successfully completed. Also, include the name, email address and phone number of the responsible official of the customer organization who may be contacted.

The State will include in the evaluation the relevancy of experience, compatibility of the experience to the Services requested in this RFP, and the performance record of the listed experience. The State reserves the right to verify all submissions and perform further background checks of experience and performance. Background checks may include other prior experiences not submitted in as a response to this section. Additionally, the State will not agree to notification of any Bidder prior to checking any listed references.

Bidder Response:

4.013 Staffing

The written proposal should indicate the competence of personnel whom the Bidder intends to assign to the project as specified Section 1.031. Qualifications will be measured by education or experience, with particular reference to experience on projects similar to that described in the RFP. For all personnel identified in Section 1.031, Bidder must provide resumes, which must include detailed, chronological work experience. It is the Bidder’s responsibility to provide clear, detailed resumes which make it easy for the JEC to determine relevant experience of proposed staff.

Bidder Response:

Bidder must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

Bidder Response:



4.014 Past Performance

Please list any contracts that you have had with the State in the last three (3) years.

Bidder Response:

4.015 Contract Performance

Indicate if the Bidder has had a contract terminated for default in the last three (3) years. Termination for default is defined as notice to stop performance which was delivered to the Bidder due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and determined that the Bidder was in default. If the Bidder has not had a contract terminated for default, the Bidder must affirmatively state this under "Reason" below.

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

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

Termination:

Reason:

4.016 Place of Performance

Bidders, in the performance of any resulting contract, must identify the place of performance for work to be done by the **Bidder and any Subcontractor**. The place of performance includes any facility that may be utilized during the term of the proposed Contract. If the place of performance is a State facility, the bidder must list the location of the office responsible for the performance. **DUNS numbers may vary by location. Please provide a DUNS number for each place of performance listed below.**

Place of Performance – Owner/Operator of facility to be used and full name and address including 9-digit zip code	Description of services to be performed at this location.	Percent (%) of Contract value to be performed at this location	Data Universal Number System (DUNS) #

4.017 Disclosure of Litigation

Bidder must disclose any material criminal litigation, investigations or proceedings involving the Bidder (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act of 2002, 18 USC 1514 *et seq.* In addition, each Bidder (and each Subcontractor) must disclose to the State any material civil litigation, arbitration or proceeding to which Bidder (or, to the extent Bidder is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Bidder or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Bidder or, to the extent Bidder is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement in Bidder's bid response. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Bidder's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.



Bidder Response:

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4.018 E-Verify

If the Michigan Department of Human Services or Michigan Department of Transportation receives goods or services under this Contract and pays for them using funds appropriated under 2012 PA 200, then the Contractor must comply with the requirements of §§ 291 and 381 of 2012 PA 200, as applicable, and use the federal E-Verify system to verify that new hire employees of the Contractor and its Subcontractors are legally present in the United States, and then certify the verification to the State.

4.019 RFP Preparation

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

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

Bidder Response:

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4.020 Former State of Michigan Employees

If former State of Michigan employees are involved in this project in any of the following capacities, you should disclose that here. If not, the Bidder may respond with an "NA".

- a. In the performance of any resulting State contract
- b. Oversight or management of any resulting State contract
- c. Consulting, conferring or advising on the RFP response (such as in the role of consultant or lobbyist).

Name of former State of Michigan Employee	State Department & Division worked For	Active Dates of State Employment	Briefly describe the role, as described above, they had in this RFP or will have in any resulting contract

Retirees of the State of Michigan that are involved in the performance of any resulting contract may be subject to Section 68 (c) of the State Employees Retirement Act, MCL 38.1 et seq. A retiree of the State of Michigan must notify the Office of Retirement Services if he or she resumes employment, directly or indirectly, with the State of Michigan.

4.021 Persons with Disabilities

If Bidder will purchase supplies and/or services from a business owned by persons with disabilities in the performance of any contract, the table below must be completed, Bidder may answer "N/A". If Bidder does not intend to purchase supplies and/or services from a business owned by persons with disabilities in the performance of any contract,

Company Name	Estimated percentage of total contract value



4.022 Community Rehabilitation Organizations

If Bidder will purchase supplies and/or services from a community rehabilitation organization in the performance of any contract, the table below must be completed, Bidder may answer "N/A". If Bidder does not intend to purchase supplies and/or services from a community rehabilitation organization in the performance of any contract,

Company Name	Estimated percentage of total contract value

4.023 State Employee Purchases - Deleted, Not Applicable

4.024 Business Owned By Qualified Disabled Veteran

"Qualified Disabled Veteran," as defined by Public Act 431 of 1984, means a business entity that is at least 51% owned by one or more veterans with a service-connected disability. The Act defines "Service-Connected Disability" as a disability incurred or aggravated in the line of active military, naval, or air service as defined in 38 USC 101 (16).

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

The Bidder represents and warrants that the company meets the above criteria (when checked) and has provided the following supportive documentation:

- A. Proof of service and conditions of discharge: DD214 or equivalent
- B. Proof of service-connected disability: DD214 if the disability was documented at discharge or Veterans Administration (VA) Rating Decision Letter or equivalent if the disability was documented after discharge
- C. Proof of Ownership: Appropriate legal documents setting forth the ownership of the business entity

IMPORTANT NOTE TO BIDDERS: Self certification alone will not initiate the price preference cited in Section 3.032, Qualified Disabled Veteran Preference.



SIGNATURE AUTHORITY

I/We certify that the undersigned is authorized to submit bids/quotations on behalf of _____ . The information provided about _____ ability to provide the goods and/or services outlined in this RFP document is true and accurate. I/We understand that our product and/or service offerings must be in compliance with all requirements of this RFP document.

Name of Bidder/Contractor/Supplier

Address of Contractor/Supplier

Telephone and Fax No. of Contractor/Supplier

E-mail Address of Contractor/Supplier

Signature of Contractor/Supplier's Authorized Representative

Title of Supplier Representative

Date

**Additional Signature
Contractor/Supplier's Authorized Representative**

Title of Supplier Representative

Date



Attachment A, Price Proposal

Prices are on a per-item (or hourly) basis and are fixed for the duration of the contract.

Consortium Program: (to be billed directly to the transit agencies)

Services	Estimated Hours	Hourly Rate (\$)	Annual Amount (\$)
Collection Site Identification			
MRO Identification			
Laboratory Identification			
Record Keeping/Reporting			
Billing			
Program Quality			
Litigation Assistance			
Audit Assistance			

Services	MDOT's Proposed # of calls (annually)	Cost per Call (\$)	Annual Amount (\$)
24-hour toll free consultation service	50		

Testing Services	MDOT's Proposed # of tests needed annually	Price per Test (\$)	Annual Amount (\$)
Random	750		
Follow-up	25		
Post-Accident	50		
Reasonable Suspicion	25		
Return to Duty	30		
Pre-Employment	300		

Total to be billed to Transit Agencies: \$



Training and Oversight: (to be billed to MDOT)

Testing Services	MDOT's Proposed # of tests needed annually	Price per Test (\$)	Annual Amount (\$)
Blind Performance Tests	25		

Services	Estimated Hours	Hourly Rate (\$)	Annual Amount (\$)
Consultation/Expert Advice			
Account Management			
Keep MDOT Informed			
Compliance Monitoring/Policy Review and Approval			

Training Service	MDOT's Proposed # of Trainings	Cost per training (\$) (including trainer fees, travel and subsistence)	Annual Amount (\$)
Transit Agency Training	Up to Two 2-day sessions per year in 3 locations in Michigan		

Total to be billed to MDOT: \$ _____

Grand Total of Bid: \$ _____