Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET **August 1, 2007**
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B2001633
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Michigan Aggregate Sand & Gravel Haulers** **765 Raburn Road, NE** **Kalkaska, MI 49646**	TELEPHONE Frank Peters **(231) 258-8237** VENDOR NUMBER/MAIL CODE BUYER (517) 373-0305 **Jeffrey A. White**
Contract Administrator: Bard Lower **Ice Control Sand – Michigan Department of Transportation**	
CONTRACT PERIOD: From: **August 1, 2002**	Thru: **August 1, 2008**
TERMS **Net 30 Days**	SHIPMENT **As Required**
F.O.B. **Delivered**	SHIPPED FROM **Kalkaska, MI**
MINIMUM DELIVERY REQUIREMENTS **50 English Tons**	

THIS CONTRACT IS AVAILABLE TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED for one year through August 1, 2008.

All other Terms and Conditions, Specifications and Pricing remain unchanged.

AUTHORITY/REASON:

Per vendor contact (Frank Peters) dated July 31, 2007 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $125,187.50

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

August 28, 2002

NOTICE
TO
CONTRACT NO. 071B2001633
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Michigan Aggregate Sand & Gravel Haulers** **765 Raburn Road, NE** **Kalkaska, MI 49646**	TELEPHONE Frank Peters **(231) 258-8237** VENDOR NUMBER/MAIL CODE BUYER (517) 373-0305 **Jeffrey A. White**
Contract Administrator: Bard Lower **Ice Control Sand – Michigan Department of Transportation**	
CONTRACT PERIOD: From: **August 1, 2002**	Thru: **August 1, 2007**
TERMS **Net 30 Days**	SHIPMENT **As Required**
F.O.B. **Delivered**	SHIPPED FROM **Kalkaska, MI**
MINIMUM DELIVERY REQUIREMENTS **50 English Tons**	

THIS CONTRACT IS AVAILABLE TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of ITB #071I2000151, this Contract Agreement and the vendor's quote dated 2/21/02. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $125,187.50

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B2001633
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE Frank Peters **(231) 258-8237**
Michigan Aggregate Sand & Gravel Haulers **765 Raburn Road, NE** **Kalkaska, MI 49646**	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-0305 **Jeffrey A. White**

Contract Administrator: Bard Lower
Ice Control Sand – Michigan Department of Transportation

CONTRACT PERIOD: From: **August 1, 2002** Thru: **August 1, 2007**

TERMS	SHIPMENT
Net 30 Days	**As Required**
F.O.B.	SHIPPED FROM
Delivered	**Kalkaska, MI**

MINIMUM DELIVERY REQUIREMENTS
50 English Tons

MISCELLANEOUS INFORMATION:
THIS CONTRACT IS AVAILABLE TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of ITB #071I2000151, this Contract Agreement and the vendor's quote dated 2/21/02. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $125,187.50

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I2000151. Orders for delivery of equipment will be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR:	**FOR THE STATE:**
Firm Name	Signature **Jeffrey A. White, Buyer Manager**
Authorized Agent Signature	Name **Tactical Purchasing, Acquisition Services**
Authorized Agent (Print or Type)	Title
Date	Date

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT & BUDGET
ACQUISITION SERVICES

Buyer: Jeffrey White
Whitej1@michigan.gov

PROJECT: ICE CONTROL SAND

FOR DEPARTMENT OF TRANSPORTATION

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Non-State Agency Statement
Item List & Pricing Sheet(s)
MDOT Regional Map

SECTION I - REQUIREMENTS

I-A SPECIFIC REQUIREMENTS

A. PRODUCT QUALITY

1. SPECIFICATIONS

Definite Specifications - The gradation the Ice Control Sand to be furnished hereunder shall conform to the specifications as noted in this Contract and/or copies of specifications attached.

2. MATERIAL CERTIFICATION

The Ice Control Sand, shall be from tested materials and/or a prequalified aggregate supplier as described in MDOT"s "Materials Quality Assurance Procedures Manual" and the "Materials Source Guide". Contact the Michigan Department of Transportation, Materials & Technology Lab @ (517) 322-1211 for instructions.

B. DELIVERY

1. TIME FRAMES

It is requested that all orders be delivered within ten (10) calendar days after receipt of order. However, vendors should state what your standard delivery is if different.

Please note that the state reserves the right to impose a penalty (late fee) on the contractor for sand not delivered within ten (10) calendar days (the ten days shall be counted continuously, but no penalty shall be imposed as long as the delivery site is not available to accept deliveries during the hours listed in Section I-B, C-4) of the date of the request for shipment. For the undelivered portion of the sand that is late, the contractor shall be charged $0.20 per ton per day that the delivery is late. In other words, if 50 tons of a 100 ton order is delivered on time, but the remaining 50 tons is delivered on day 13, the contractor will be charged 50 tons multiplied by $0.20 multiplied by 3 days. Therefore, $30.00 will be deducted from the invoice for that delivery location.

2. MINIMUM ORDER

It is requested that the minimum order is 50 English tons. If the bidder's minimum order requirement is less than 50 English tons, that minimum, which will become the minimum order if a Contract is awarded to the bidder, shall be indicated in the space provided on the attached Item List & Price Sheet(s)

Also, please indicate in the space provided on the attached Item List & Price Sheet(s) any additional charge (handling fee) to be applicable on orders under 50 English tons. or under the bidder's minimum order requirement indicated on the attached Item List & Price Sheet(s).

3. F.O.B. POINT

Prices are **"F.O.B. Delivered and Unloaded"** to each drop point indicated on the attached item listing, with transportation charges prepaid on all orders of 50 English tons or more to the State, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item List & Price Sheet(s).

4. Delivery Schedule

All deliveries to MDOT locations must be coordinated between the contractor and the TSC maintenance representative. MDOT deliveries will be accepted Monday through Friday between 7:30 A.M. and 2:00 P.M. All delivery points shall be contacted approximately 48 hours prior to delivery. **Once deliveries begin for a particular location, deliveries must continue until that particular location has received the entire quantity requested.**

I-B WEIGHT CERTIFICATIONS

All aggregate to be delivered **MUST** be weighed on certified scales that conform to section 109.01 paragraph G, of the Michigan Department of Transportation 1996 Standard Specifications for the Construction unless specifically specified herein. Scale certification and inspection, shall be conducted by the specific scale manufacturer authorized service dealer. The State can require re-certification of the scale, if a particular aggregate shipment is found to be +/- 1% off. In addition, all delivery tickets MUST be generated and printed from a computerized scale. All trucks shall be weighed empty each time, then, weighed loaded, and the differential shall be the net weight recorded on the delivery ticket. Scale operators shall not pre-enter estimated empty truck tare weights. **Hand written tickets are unacceptable**. The awarded vendors' scales must be cleaned on a regular basis if appropriate. Violation of any of the above requirements can be grounds for rejection of an aggregate shipment.

The state reserves the right to disallow the use of any weigh station, trucking company, etc. that is utilized by the contractor if it is discovered that there are inconsistencies regarding the quantity indicated on a delivery ticket and the actual amount received or verified by the reweighing of a truck. **The State has made arrangements with the appropriate enforcement authorities to increase the frequency of "spot checks" on trucks hauling aggregates to various delivery locations.** If it is discovered that a particular delivery ticket exceeds the actual amount verified by reweighing a truck, the Michigan Department of Transportation will pay based on the reweighed quantity. The state may also seek the prosecution of companies that are found to be involved in "short shipping."

SECTION II - GENERAL CONTRACT PROVISIONS

II-A GENERAL

This Contract is for commodities or services specified hereunder, for the State of Michigan. Exact quantities to be purchased are unknown, however, as the successful Contractor you will be required to 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. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form and by Acquisition Services on the Purchase Order Form.

This a Unit Price Contract.

Indicated on the attached item listing are the "ship to" address's for the participating agency locations. However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

II-B ISSUING OFFICE

The Contract is issued by State of Michigan, Department of Management and Budget, Acquisition Services, hereinafter known as Acquisition Services, for the Michigan Department of Transportation hereinafter known as MDOT. Where actions are a combination of those of Acquisition Services and MDOT, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process. All communications covering this procurement must be addressed to:

Department of Management and Budget
Acquisition Services
Attn: Jeffrey White
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 373-0305
whitej1@michigan.gov

II-C CONTRACT ADMINISTRATOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of the Contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services.

State of Michigan, Contract Administrator shall be: Bard Lower (517) 322-3332

II-D CONTRACT TERM

The term of this contract will be for a five (5) year period and will commence with the issuance of a Contract. This will be 8/1/02 through 8/1/07. At the sole option of the State, the Contract may be extended for up to 2 (two) additional years. Contractor performance, quality of products, price, and the Contractor's ability to deliver on time are some of the things that will be used as a basis for any decision by Acquisition Services to extend the Contract.

II-E ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

The following documents constitute the complete and exclusive agreement between the parties. The following order of precedence shall apply (in descending order):

A. Any contract resulting from the State's ITB No. 071I2000096.
B. Any addenda to that ITB.
C. The Contractor's response to that ITB.

The State of Michigan shall not be bound by any part(s) of the bidder's response to the ITB which contained information, options, conditions, terms, or prices neither requested nor required in the ITB. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the Contractor, those of the State take precedence. The contract supercedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

II-F NO WAIVER OF DEFAULT

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

II-G REVISIONS, CONSENTS, AND APPROVALS

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

II-H SEVERABILITY

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

II-I SURVIVOR

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

II-J GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

II-K RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR)

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

II-L HEADINGS

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

II-M INCURRING COSTS

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

II-N NEWS RELEASES

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

II-O CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the prime 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 primary 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.

II-P PERFORMANCE REVIEWS

Acquisition Services in conjunction with MDOT may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products being delivered, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Acquisition Services reserves the right to cancel the Contract immediately at any time for default, if the Office documents that unsafe and/or adulterated or off-condition products are being delivered to any State agency by the Contractor.

II-Q PRODUCT TESTING AND CERTIFICATION

Prior to shipping the first order, the vendor awarded a contract must have the material to be supplied, tested and certified. Contractors must contact the MDOT Construction and Technology/Aggregate Testing and Certification Division at (517) 322-5665 or 322-1087 for instructions.

II-R AUDIT OF CONTRACT COMPLIANCE

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

II-S SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such safety requirements, rules, laws or regulations shall be a material breach of the Contract and shall be grounds for cancellation of the Contract in accordance with the Cancellation provisions contained herein.

II-T ASSIGNMENT

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

II-U DELEGATION

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

II-V DISCLOSURE

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

II-W TAXES

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

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

C. Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract. Also, Contractors shall maintain appropriate payroll information on a system that can produce any reports that may be needed by Acquisition Services.

II-X PRICE

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

Prices are subject to change at the end of each 365 day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Acquisition Services reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Acquisition Services also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365 day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

II-Y ADDITIONAL PRODUCTS

The State reserves the right to add an item(s) that is not described on the Item List & Price Sheet(s) and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

II-Z CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract (Direct Purchase Order), whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

A. Claims under workers' compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers' Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' compensation laws of any other state the Contractor shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee.

B. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.

C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, subject to limits of liability of not less than $300,000 each occurrence and, when applicable $300,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.

D. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than $50,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.

E. Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than $300,000 each occurrence and when applicable, $300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include Contractual liability insurance as applicable to the Contractor's obligations under the Indemnification clause of the Contract (Direct Purchase Order).

BEFORE THE CONTRACT IS EXECUTED BY ACQUISITION SERVICES, THE CONTRACTOR MUST FURNISH TO ACQUISITION SERVICES, CERTIFICATE(S) OF INSURANCE VERIFYING LIABILITY COVERAGE. THE CONTRACT OR DIRECT PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least fifteen days prior written notice bearing the Contract No. or Direct Purchase Order No. has been given to the Director of Acquisition Services.

II-AA INDEMNIFICATION

A. General Indemnification

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

1. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.

2. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;

3. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;

4. any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;

5. any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

B. Patent/Copyright Infringement Indemnification

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

C. Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts,

disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, 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 subclause.

D. Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

II-BB RIGHT TO KNOW ACT (Act 80 of 1986)

The "Right to Know Act" is intended to provide protection and information to employees who encounter hazardous substances in the workplace. To comply with this act, it is necessary that you fulfill the following:

Labels on all incoming containers of hazardous chemicals must (1) clearly State the identity of the contents, (2) display appropriate hazard warning(s), (3) include first aid information, and (4) list the name and address of the chemical manufacturer, importer, or other responsible party.

Material Safety Data Sheets must be included with shipment of chemical or hazardous material to the receiving State agency. It is necessary to send this document only on the first shipment for each chemical formulation or hazardous material ordered by a specific agency except when there has been a change in the formulation of the specified chemical or hazardous material, in which case, a revised material safety data sheet shall accompany the first shipment of the changed formulation. It is the responsibility of the shipping vendor to maintain this record. The receiving agency will not accept first shipment unless the above is complied with. It is recommended that OSHA Material Safety Data Sheet No. 174 be used.

II-CC CONTRACT DISTRIBUTION

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by the purchasing office.

II-DD ACCOUNTING RECORDS

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

II-EE NON-DISCRIMINATION CLAUSE

In the performance of a Contract or purchase order, the contractors agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each

subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq, and the Michigan Handicapper's Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq, and any breach thereof may be regarded as a material breach of the Contract or purchase order.

II-FF CANCELLATION

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

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

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

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

B. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not 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 Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

C. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by

giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

D. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.

E. In the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 4-6. Cancellation may be in whole or in part and may be immediate as of the date of the written notice to the Contractor or may be effective as of the date stated in such written notice.

F. **If at any time during the term of the contract the CONTRACTOR can not supply materials as specified, MDOT has the right to terminate the CONTRACT and penalize the CONTRACTOR a sum equal to the expenses related to re-bidding this contract.**

II-GG NOTICE AND RIGHT TO CURE

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

II-HH ELECTRONIC FUNDS TRANSFER

Electronic transfer of funds is available to State contractors. Contractors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically.

II-II MODIFICATION OF CONTRACT

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

II-JJ UNFAIR LABOR PRACTICES

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

II-KK FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

II-LL LIQUIDATED DAMAGES

The delivery requirement of all quantities ordered being delivered and unloaded to a specific delivery point within ten (10) calendar days from date of order as set forth in this ITB have been fixed so that shipment is consistent with timing schedules of the State's program.

If complete delivery of quantities ordered to a specific location do not fall within the time limits set forth in the ITB, the delay will interfere with the proper implementation of the State's program utilizing these materials, to the loss and damage of the State. From the nature of the case, it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such delay. The State and the Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be in the amount set forth below, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty. The State at its option, for amounts due the State as liquidated damages may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

(A) If the Contractor fails to deliver and unloaded all materials ordered for a specific delivery point within ten (10) calendar days from the date of order, ready for use on or before the scheduled delivery completion date, the Contractor shall pay to the State, as fixed and agreed, liquidated damages, for each calendar day between the scheduled delivery completion date and the date of final delivery, two-percent (2%) per ton of the of the undelivered portion of the order.

(B) If some, but not all, of the materials are delivered ready for use, by the scheduled delivery completion date, liquidated damages shall not accrue against the materials delivered.

(C) If the delay is more than thirty (30) calendar days, then by written notice to the contractor, the State may terminate the right of the contractor to deliver undelivered materials, and may obtain substitute materials. In this event, the contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute material is delivered, ready for use, or for 30 days from the scheduled delivery completion date, whichever occurs first. The Contractor shall also be liable for outbound preparation and shipping costs for contracted items returned under this clause.

Exception

Except with respect to defaults of subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the delays must be beyond the control and without the fault or negligence of the Contractor. If the delays are caused by the default of a subcontractor, if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of any of them, the Contractor shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

II-MM CONTRACT PAYMENT SCHEDULE

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

NON-STATE AGENCY STATEMENT:

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to local units of government and school districts. As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the use of State contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of Acquisition Services, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

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

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

BIDDER MUST CHECK ONE BOX BELOW

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

[ ] Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized Extended Purchasing members. We will supply to State of Michigan departments and agencies only.

Michigan Aggregate Sand & Gravel Haulers
Vendor Name

Frank Peters
Authorized Agent Name (print or type)

MICHIGAN
DEPARTMENT OF TRANSPORTATION
BUREAU OF HIGHWAYS

SPECIFICATIONS
FOR
ICE CONTROL SAND
(I.C.S.)

M:GJC **1 of 1** **Dated: 08-12-98**

1.0 DESCRIPTION.- This special provision consists of defining the grading and physical requirements for Ice Control Sand, I.C.S.

2.0 MATERIALS.- The Ice Control Sand, I.C.S. shall meet the following requirements.

ICE CONTROL SAND, I.C.S.

Grading Requirements

Sieve Analysis (MTM 109)

Sieve Size	I.C.S.
9.5 mm	100
4.75 mm	95-100
2.36 mm	65-90
0.60 mm	20-65
LBW (MTM 108)	0-3

Physical Requirements

Test	Description	Specification
MTM-118	Angularity Index	2.0 Minimum

SECTION III - ITEM LIST AND PRICE SHEET(S)

Item No.	Commodity Code	Quantity	Unit	Description	Unit Price
				Ice Control Sand, In compliance with Michigan Department of Transportation, Specification, dated 08-12-98	
				SUPERIOR REGION	
6a.	750-54		TN	Michigan Department of Transportation **St. Ignace** Maintenance Garage 500 Ferry Ln. St. Ignace, MI 49781	$ 7.75
6b.	750-54		TN	Michigan Department of Transportation **Mackinaw Bridge Authority** 333 I-75 St. Ignace, MI 49781	$ 7.75
7.	750-54		TN	Michigan Department of Transportation **Upper Peninsula** Sign Shop M-117, P.O. Box 207B Engadine, MI 49827	$ 7.75
				NORTH REGION	
11.	750-54		TN	Michigan Department of Transportation **Mio** Maintenance Garage 305 West M-72, P.O. Box 368 Mio, MI 48647	$ 6.75
12.	750-54		TN	Michigan Department of Transportation **Reed City** Maintenance Garage 8424 W. US-10 Reed City, MI 49677	$ 5.75
14.	750-54		TN	Michigan Department of Transportation **Kalkaska** Maintenance Garage 809 N. Birch, P.O. Box 97A RR#4 Kalkaska, MI 49646	$ 6.50

The person(s) responsible for administering this contract for the contractor will be:

NAME: Frank Peters

TITLE: President

PHONE: (231) 258-8237

MDOT Regions

Michigan Department of Transportation