



**STATE OF MICHIGAN
Department of Natural Resources
Procurement Services**

**REQUEST FOR INFORMATION (RFI)
For
Timber Preparation Pre-Qualification**

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9. Timber Sale Preparation Checklist
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DEFINITION OF TERMS

Terms	Definitions
Contract	A BINDING AGREEMENT ENTERED INTO BY THE STATE OF MICHIGAN CONSISTING OF THE TERMS AND CONDITIONS ATTACHED AND THE BIDDER’S STATEMENT OF QUALIFICATIONS (SOQ). A CONTRACT DOES NOT GUARANTEE WORK. DNR WILL ISSUE A PURCHASE ORDER AGAINST THE CONTRACT FOR ALL BID ITEMS AWARDED. THE CONTRACTOR IS ALSO BOUND TO THE SPECIFIC TERMS AND CONDITIONS IDENTIFIED ON THAT PURCHASE ORDER.
CONTRACTOR	THE SUCCESSFUL BIDDER WHO IS AWARDED A CONTRACT.
SUCCESSFUL BIDDER	THE BIDDER(S) AWARDED A CONTRACT AS A RESULT OF A SOLICITATION.
STATE	THE STATE OF MICHIGAN. FOR PURPOSES OF INDEMNIFICATION AS SET FORTH IN SECTION I-J, STATE MEANS THE STATE OF MICHIGAN, ITS DEPARTMENTS, DIVISIONS, AGENCIES, OFFICES, COMMISSIONS, OFFICERS, EMPLOYEES AND AGENTS.
Blanket Purchase Order	ALTERNATE TERM FOR “CONTRACT” USED IN THE STATE’S COMPUTER SYSTEM (MICHIGAN AUTOMATED INFORMATION NETWORK [MAIN])
EXPIRATION	EXCEPT WHERE SPECIFICALLY PROVIDED FOR IN THE CONTRACT, THE ENDING AND TERMINATION OF THE CONTRACTUAL DUTIES AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT PURSUANT TO A MUTUALLY AGREED UPON DATE.
CANCELLATION	ENDING ALL RIGHTS AND OBLIGATIONS OF THE STATE AND CONTRACTOR, EXCEPT FOR ANY RIGHTS AND OBLIGATIONS THAT ARE DUE AND OWING.

Terms	Definitions
WORK PRODUCT	WORK PRODUCT MEANS ANY DATA COMPILATIONS, REPORTS, AND ANY OTHER MEDIA, MATERIALS, OR OTHER OBJECTS OR WORKS OF AUTHORSHIP CREATED OR PRODUCED BY THE CONTRACTOR AS A RESULT OF AND IN FURTHERANCE OF PERFORMING THE SERVICES REQUIRED BY THIS CONTRACT.
CONTRACT ADMINISTRATOR	DNR – PROCUREMENT SERVICES BUYER AUTHORIZED TO CHANGE, MODIFY, CLARIFY, AMEND OR OTHERWISE ALTER THE PRICING, TERMS, CONDITIONS AND SPECIFICATIONS OF THE CONTRACT.
CONTRACT COMPLIANCE INSPECTOR	EMPLOYEE WITHIN THE DNR – FMFM RESPONSIBLE FOR DAY-TO-DAY FISCAL ADMINISTRATION OF THE CONTRACT.
PROGRAM CONTACT	EMPLOYEE WITHIN THE DNR – FMFM RESPONSIBLE FOR DAY-TO-DAY TECHNICAL OVERSIGHT OF THE CONTRACT.
TIMBER MANAGEMENT SPECIALIST (TMS)	THERE ARE FOUR (4) TIMBER MANAGEMENT SPECIALISTS WITHIN THE DNR – FMFM, EACH RESPONSIBLE FOR A GEOGRAPHIC AREA OF THE STATE (APPENDIX 2 & 13). THE TMS’S ARE RESPONSIBLE FOR TRAINING AND QUALITY CONTROL WITHIN THEIR GEOGRAPHIC AREA, INCLUDING CERTIFICATION AND DE-CERTIFICATION.
UNIT MANAGER	THERE ARE FIFTEEN (15) UNIT MANAGERS WITHIN DNR – FMFM, EACH RESPONSIBLE FOR A MANAGEMENT UNIT (APPENDIX 1 & 13). THE UNIT MANAGER IS RESPONSIBLE FOR ALL BID ITEMS FROM THEIR MANAGEMENT UNIT. THE UNIT MANAGER MAY APPOINT INSPECTORS AND OTHER LOCAL CONTACTS TO WORK WITH THE CONTRACTOR ON DAY TO DAY TECHNICAL ISSUES AND TO INSURE CONTRACT QUALITY. THE UNIT MANAGER IS THE FINAL FIELD APPROVAL ON INVOICES.
INSPECTORS/ LOCAL CONTACTS	DNR – FMFM EMPLOYEES APPOINTED BY THE UNIT MANAGER TO WORK WITH THE CONTRACTOR ON ALL DAY-TO-DAY TECHNICAL ASPECTS OF THE CONTRACT. THE INSPECTORS WILL BE INVOLVED WITH THE PRE-WORK MEETING (I-E, 4) AND WILL BE RESPONSIBLE FOR

Terms	Definitions
	EVALUATING THE CONTRACTORS WORK PERFORMANCE USING THE TIMBER SALE PREPARATION CHECKLIST (APPENDIX 9) AND THE COMPLIANCE AND INSPECTION PROCEDURES (I-B).
PRE-QUALIFIED	A PRE-QUALIFIED CONTRACTOR AGREES TO ALL THE CONDITIONS AND REQUIREMENTS OF THE CONTRACT. TO BE PRE-QUALIFIED, A CONTRACTOR MUST SUBMIT A STATEMENT OF QUALIFICATIONS (SOQ). THE CONTRACTOR'S SOQ WILL BE EVALUATED AND SUCCESSFUL APPLICANTS WILL BE PRE-QUALIFIED TO BID ON TIMBER SALE PREPARATION WORK FOR THE DNR – FMFM. TO BE PRE-QUALIFIED, A CONTRACTOR OR HIS/HER REPRESENTATIVE MUST BE CERTIFIED OR HAVE COMPLETED ITEMS 1 TO 4 IN THE TIMBER MARKER AND CRUISER TASK BOOK (APPENDIX 10).
CONTRACTOR'S REPRESENTATIVE	THE CONTRACTOR MAY APPOINT A REPRESENTATIVE TO BE RESPONSIBLE FOR THE TECHNICAL ASPECTS OF THE CONTRACTOR'S WORK.
CERTIFICATION	THE CONTRACTOR OR THE CONTRACTOR'S REPRESENTATIVE MUST BE CERTIFIED BEFORE FIELD WORK CAN BEGIN. A CONTRACTOR MAY BECOME PRE-QUALIFIED WITH ONLY ITEMS 1 TO 4 OF THE TIMBER MARKER AND CRUISER TASK BOOK COMPLETE, BUT FIELD WORK CANNOT BEGIN UNTIL THE CONTRACTOR OR HIS/HER REPRESENTATIVE IS FULLY CERTIFIED. ALL FIELD WORKERS FOR THE CONTRACTOR MUST ALSO BE CERTIFIED. A DETAILED EXPLANATION OF CERTIFICATION IS INCLUDED IN THE TIMBER MARKER AND CRUISER TASK BOOK (APPENDIX 10).
COMPLETION	COMPLETION OF A BID ITEM OCCURS WHEN ALL INFORMATION, E.G. CRUISE DATA, GPS FILES, SUMMARY SHEETS, SKETCH MAPS, ETC., HAS BEEN SUBMITTED AND A FINAL INSPECTION HAS BEEN COMPLETED. IN OTHER WORDS, THE UNIT MANAGER OR HIS/HER REPRESENTATIVE HAS RECEIVED, INSPECTED AND APPROVED ALL WORK. IF AN ITEM DOES NOT PASS INSPECTION, THERE WILL BE NO EXTENSION OF TIME. IT IS THE CONTRACTOR'S

Terms	Definitions
	RESPONSIBILITY TO ASSURE ADEQUATE TIME FOR INSPECTION BY THE STATE AFTER FIELD WORK IS COMPLETE. LIQUIDATED DAMAGES FOR LATE COMPLETION ARE DEFINED AS 1/2% OF THE ITEM PRICE PER DAY.

Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The Contract is for timber sale preparation work on State forest land. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as BID AND AWARDED during the Contract period. The DNR-FMFMD will periodically release bids to pre-qualified bidders. Upon award of work, DNR-FMFMD will issue Purchase Orders against the Contract.

1.002 BACKGROUND (RESERVED)

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

General Tasks

The contractor agrees to perform work within the following treatment categories according to DNR specifications, and to supply all necessary equipment and supplies except as noted herein to be supplied by DNR.

- a. Cruise timber prescribed for harvest
- b. Mark and tally trees prescribed for harvest or leave
- c. Establish and mark interior payment unit boundaries
- d. Establish and mark cutting unit boundaries
- e. Establish and mark property boundaries
- f. Determine acreage contained within specified established boundaries
- g. Conduct ongoing quality assurance/quality control
- h. Maintain records of work and report as specified below

1.102 OUT OF SCOPE (RESERVED)

1.103 ENVIRONMENT (RESERVED)

1.104 WORK AND DELIVERABLE

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

Specific Tasks:

The Contractor agrees to adhere to the following specifications, and as may be further detailed in prescriptions for the specific treatment areas involved:

- a. In treatment areas where the prescription calls for timber cruising:
 - 1) Sample the treatment area to determine volumes, species, and products in accordance with the DNR Product Standards (Appendix 8), and as taught in the standard DNR certification course and/or specified in individual stand prescription sheets. Also include the following elements, as appropriate:
 - a) Marking or Otherwise Designating Plot Center Locations—Plot centers used in the cruise will be marked with clearly visible ribbons (in addition, GPS coordinates are encouraged). Unless otherwise agreed to by the Unit Manager or her/his representative and the contractor, a plot stake or a stick firmly inserted in the ground (not snow), will mark centers with a ribbon attached to it at a height of not less than two feet above the ground. One free end of the ribbon shall be at least 18 inches in length. Write the plot number on the ribbon with black permanent marker.
 - b) Plot Location—Locations of all plots taken from which volume determination was made shall be shown on a map of the treatment area. Show GPS coordinates if available.
 - c) Stand Stratification (if appropriate)—Strata should be clearly shown on map of the treatment area. Plot locations should clearly show their relationship to the strata boundaries.
 - 2) Submit original tally sheets and enter cruise data on DNR forms (appendix 14) provided suitable for entry into the Timber Sale PC Program.
 - 3) Note that cruising as used herein may include individual tree marking of up to 5 trees per acre.
 - 4) Cruising may also include a tally of residual basal area by species, if so called for in Stand Prescription sheets.
- b. In treatment areas where the prescription calls for tree marking:
 - 1) Select crop trees, leave trees, harvest trees, den trees, and snags according to the stand prescription (Appendices 3 & 4) provided for each parcel. In addition, mark according to training received in the DNR certification course and outlined in *The Compleat Marker: A Guide to Managing Northern Hardwoods on Michigan State Forests* (Appendix 5 & 6).
 - 2) Contractor must notify the Unit Manager or his/her representative one week prior to beginning to mark a particular treatment area. The unit manager will arrange for DNR staff to be present at the beginning of

the marking of a treatment area and during a portion of the work performed on that treatment area to provide quality assurance support. If the Unit Manager, or other appointed DNR staff member, fail to appear at the appointed time and place, marking by the contractor and his staff may proceed.

- 3) Marking must be done in dry weather and when tree surfaces are not wet. Paint must adhere well to the trees. Marks shall be placed at 6 feet above the base of the tree (two sides), and at the base of the stump (one side), between the roots and must intersect with the ground. Paint shall not be applied on moss.
 - 4) Marking trees on two opposite sites will be required. This specification will be followed unless specifically overridden by prescription language requiring another type of mark for a particular stand. Upper paint marks on sawlog trees shall consist of a horizontal or diagonal slash and an additional dot on one side for each 8-foot log tallied, and a double slash on the other side. Pulpwood trees shall be marked with a horizontal or diagonal slash.
 - 5) Unless otherwise stated in the Stand Prescription furnished for that stand, marking tally shall be 100% tally of sawlog sized trees including sawlog sized pulpwood trees and a sample ratio for pulpwood trees, OR a point sample cruise of all pulpwood trees.
 - 6) Determine products, diameter, species, and merchantable height of trees designated for cutting according to the Product Standards (Appendix 8).
 - 7) Submit original tally sheets and enter marking tally on DNR forms (appendix 14) provided that are suitable for entry into the Timber Sale PC Program.
- c. In treatment area where the prescription calls for interior payment unit boundary marking:
- 1) Larger timber sales may sometimes be divided into smaller sub-units called "payment units." These allow for smaller progressive payments to be made by the timber sale purchaser. Boundaries between payment units may be somewhat flexible in location, as long as the desired number of roughly equal units is created.
 - 2) When payment unit boundary designation requires painting a line, locate and paint in the boundaries according to the direction provided by DNR for each site. Hand compasses are adequate and GPS information is usually not required.
 - 3) Unless otherwise instructed, paint the line in such a way that it can be seen from either side and while walking along the line from either direction. Place marks approximately six feet above the base of the tree.
- d. In treatment areas where the prescription calls for establishing and marking cutting boundaries.

- 1) Cutting boundaries are used to differentiate between cut and no-cut areas, or differing adjacent treatments. They may be based on cover type differences, environmental factors, specific objectives, or other factors.
 - 2) Locate and paint the cutting boundary according to guidance and instruction provided by the DNR for each site.
 - 3) Unless otherwise instructed, paint the line in such a way that it can be seen from the inside of the sale area and when walking along the line from either direction. Place marks approximately six feet above the base of the tree.
- e. In treatment areas where the prescription calls for establishing and marking property boundaries:
- 1) Using best available information on existing property lines and survey corners, locate and paint in boundaries of legal descriptions provided by DNR.
 - 2) Document in writing the data and information used as a basis, and describe any unusual adaptations.
 - 3) If adequate information is lacking or questionable, check with DNR for assistance before proceeding. Don't locate a line if you are unsure.
 - 4) Work will not be requested which requires equipment beyond a hand held compass and chains, or other distance measuring devices.
 - 5) Unless otherwise instructed, paint the line in such a way that it can be seen from the State side of the sale area and when walking along the line from either direction. Place marks approximately six feet above the base of the tree.
- f. In treatment areas where the prescription calls for area determination, unless changed by the Stand Prescription:
- 1) Using GPS as the basis, run boundaries to determine acreage to the nearest one-tenth (0.1) acre.
 - 2) Position Mode must be set so that GPS receiver collects data from a minimum of four satellites, and positions deliver 3-dimensional data. 2D positions will not be acceptable.
 - 3) The following information must be collected: the number of satellites, satellites identification, 2-D vs. 3-D, DOP, SNR. All this information recordable on any modern GPS unit.
 - 4) The GPS unit should be set with an HDOP less than 5. Note that PDOP was used to proof that the data was 3-dimensional and this is covered under 2). PDOP is a measure of 3 dimensional error (anywhere within a sphere), HDOP is a measure of horizontal error

(anywhere on a plane). Since we map and calculate area in 2-D, HDOP is the preferred error measurement. Anything over 4 is not going to give us the accuracy needed to be confident in acreage to the tenth of an acre.

- g. In all areas, conduct ongoing quality assurance/quality control. Quality assurance/quality control (QA/QC) is the process used by the field forester to assure that the work under his or her direction is done to standards. QA/QC will be conducted by the Contractor under the specific method described in the Contractor's Statement of Qualifications. The Contractor's QA/QC notes will be available to the DNR inspector upon request. It is the DNR inspector's job to insure that the State of Michigan receives the correct product. It is not the DNR inspector's job to check the contract work for the benefit of the Contractor or his or her employees. It is the Contractor's job to assure that his or her work or that of his or her employees is of the quality required by the Contract.

Compliance and Inspection Procedures

In General:

- Prescriptions are not "black and white" and variations from the prescription may occur.
- When differences occur it should be obvious to the inspector why a change was made to the prescription. This could be due to the need to remove trees of poor health and quality or to retain adequate seed sources or the need for a good species mix.
- If the marking decision is not obvious to the inspector, the contractor or a representative may provide an acceptable explanation to the inspector.
- Rounding of all calculations used in the inspection procedure will be done to the nearest whole percent, e.g. 0.5 would be rounded to 1.0.

Specifically, the following types of inspections, based on individual stand prescription sheets and DNR standards will determine contract compliance.

1. Inspection for accuracy of volume estimation in marked stands:

- a) For sawlog trees, where the number of sawlog sticks are shown by the number of paint dots on the bole, the DNR will check the accuracy of the sawlog cruise by use of check-points. The number of check-points to be established in any area will be equal to at least 10% of the check area, e.g. a 40 acre check area will require at least four check-points. These points will be randomly distributed across the check area. These points may also be used to inspect for adherence to the marking prescription as described in section 2.

On each check-point, all sawlog trees that are "in" will be measured and tallied. The DNR sawlog tally of each tree will be compared to the contractor's paint dot tally. Trees will be compared on a one-to-one basis (DNR to contractor) and points will be assigned to each tree based on how they compare to the DNR tally of the same tree. One point will be subtracted for each stick difference between the contractor and the DNR. For example, a perfect score would occur when the contractor dot tally equals the DNR dot tally (in this case, no points would be missed). A DNR tally of 5 and a contractor paint dot tally of 3 would produce a score of 2.

Each check-point will have a score for total points missed and total sticks. The check-points will then be summed for total points missed and total sticks. The final score will be determined by the percent of total points missed to total sticks. If the contractor score falls between 0-20%, then the contractor dot tally will be considered accurate. If the contractor's score is greater than 20%, the dot tally will be considered inaccurate and the contractor will have to re-mark the area, adding dots and eliminating dots as required.

After re-marking, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the contractor score falls between 0%-20%, then the contractor dot tally will be considered accurate. If the contractor's score is greater than 20%, the dot tally will be considered inaccurate and the contractor will have to re-mark the area, adding dots and eliminating dots as required.

After the second re-marking, the DNR will again establish check-points equal to at least 10% of the check area. If the contractor score falls between 0%-20%, then the contractor dot tally will be considered accurate and there will be no damages assessed. If the contractor's score is greater than 20%, the dot tally will be considered inaccurate. At the end of the third re-tally, if the contractor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Marked Sawlog Check Cruise¹

Point	Contractor's Logs	Check Logs	Difference
1	2	2	0
1	3	3	0
1	1	1	0
2	0	1	1
2	2	1	1
2	3	4	1
3	1	2	1
3	2	2	0
3	3	3	0
TOTAL	--	19	4

¹ From form R4039-3 Marking Prescription & Sawlog Check, appendix 15.

SCORE: $4/19 * 100 = 21\%$ **Note: =20% to pass.**

- b) For pulpwood trees, where the trees were sampled by point cruising with cumulative tally, the DNR will check the accuracy of the cruise by inspecting at least 10% of the cruise points. The number of check-points to be established in any one check area will be equal to at least 10% of the check area acreage, e.g. a 40 acre check area will require at least four check points.

On the check-point, all pulpwood trees that are "in" will be measured and tallied by species. The contractor's tally card will be compared to the inspectors tally and points will be assigned to the contractor-tally based on a comparison with the DNR tally. One point will be assigned for each stick count difference and for each tree count difference by species between the contractor and the DNR. If a species is miss-identified, but the tree was cruised, points off for that tree will only be recorded once (see example). A perfect score for a check-point would occur when the contractor's sticks and trees by species equal the DNR tally (in this case, no points would be assessed). A DNR tally of 10 sticks and 3 trees for sugar maple and 3 sticks and 1 tree for red maple compared to a contractor tally of 8 sticks and 2 trees for sugar maple and 2 sticks and 1 tree for red maple would produce a score of 4.

The final score will be determined by taking the sum of all the contractor's points and comparing them to the DNR total (all sticks plus all trees by all species). If the contractor score falls between 0%-20%, then the contractor tally will be considered accurate. If the contractor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the contractor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After re-cruising, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the contractor score falls between 0%-20%, then the contractor tally will be considered accurate. If the contractor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the contractor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After the second re-cruising, the DNR will again establish new check-points equal to at least 10% of the check area. If the contractor score falls between 0%-20%, then the contractor's tally will be considered accurate and there will be no damages assessed. If the contractor's score is greater than 20%, the tally will be considered inaccurate. At the end of the third re-cruise, if the contractor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Cumulative Tally Check Cruise for Marked Pulp (form R4039-5, appendix 15)

Point	Species	Contractor		Check Cruiser		Difference	
		Total Trees	Total Sticks	Total Trees	Total Sticks	Total Trees	Total Sticks
6	01	1	2	1	2	0	0
6	03	2	4	2	4	0	0
6	04	1	1	1	1	0	0
6	05	1	3	1	3	0	0
13	01	1	4	1	3	0	1
13	03	2	7	1	4	1	3
13	04	1	2	1	2	0	0
16	03	1	3	1	2	0	1
16	05	2	7	1	3	1	4
16	06	0	0	1	4	0 ¹	0 ¹
TOTAL	--	--	--	11	28	2	9
				39		11	

¹ On point 16, the contractor called a white ash a basswood. Note that she had 2 basswood trees with 7 sticks, when she should have cruised 1 basswood with 3 sticks and 1 white ash with 4 sticks. Since the points off for calling a white ash a basswood were taken on the basswood line of the tally sheet, there are no additional points taken on the white ash line of the cruise sheet. This is done to prevent 'double jeopardy' for missing a species.

SCORE: Total Trees & Sticks Score: $11/39 * 100 = 28\%$ **Note: =20% to pass.**

- c) For pulpwood trees, where the trees were sampled on a ratio basis, e.g. 1:50, and the number of sticks in any particular tally tree are shown by the number of slash marks on the bole, the DNR will check for accuracy by sampling at least 25% of the pulpwood tally trees, e.g. 10 tally trees will be checked in an area where 40 were sampled.

Trees will be compared on a one-to-one basis (DNR to contractor) and points will be assigned to the contractor-tallied tree based on how they compare to the DNR tally of the same tree. One point will be assigned for each stick difference between the contractor and the DNR. For example, a perfect score would be when the contractor dot tally equals the DNR dot tally (in this case, no points would be assessed). A DNR tally of 5 and a contractor tally of 3 would produce a score of 2.

The final score will be determined by taking the sum of all points and comparing these to the DNR total tally. If the contractor score falls between 0%-20%, then the contractor tally will be considered accurate. If the contractor's score is greater than 20%, the tally will be considered inaccurate and the contractor will have to re-mark the sample trees, adding slashes and eliminating slashes as required.

After the sample trees have been re-marked, the DNR will again check at least 25% of the pulpwood tally trees. If the contractor score falls between 0%-20%, then the contractor tally will be considered accurate. If the contractor score is greater than 20%, the tally will be considered inaccurate and the contractor will have to re-mark the sample trees, adding slashes and eliminating slashes as required.

After the second re-marking, the DNR will again check at least 25% of the pulpwood tally trees. If the contractor score falls between 0%-20%, then the contractor tally will be considered accurate and there will be no damages assessed. If the contractor's score is greater than 20%, the tally will be considered inaccurate. At the end of the third re-tally, if the contractor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Marked and Sampled Pulp Check Cruise (form R4039-4, appendix 15)

Tree #	Contractor's Sticks	DNR Sticks	Points Off
1	3	3	0
2	2	1	1
3	4	3	1
4	6	6	0
5	3	3	0
TOTAL	N/A	16	2

SCORE: $2/16 * 100 = 12\%$

Note: =20% to pass.

2. Inspection for adherence to the marking prescription:
 - a) Evaluation factors. For marked stands, the DNR will randomly locate points within the marked area to check for adherence to the marking prescription. These points may be the same points as used in the Compliance and

Inspection Procedures, No. 1. The following factors will be considered in determining whether or not a stand has been satisfactorily marked:

- 1) Residual basal area. The cumulative cross sectional area in square feet of trees measured at DBH remaining after a harvest.
- 2) Crop trees. A crop tree is a tree of any species that contains a straight, single stem capable of producing at least sixteen feet of clear lumber. It also is a tree that has a large, full-bodied crown that occupies a dominant or co-dominant position in the overstory and contains no apparent major defects. If no tree can be found to meet the criteria, then the best tree available in any one place will be designated as the crop tree (called "best tree in place").
- 3) Must-cut trees. A must-cut tree is defined as a tree that is adjoining a crop tree with a crown that is found to interfere and impact the crown of the crop tree.

b) Evaluation criteria. The check points described in Compliance and Inspection Procedures, No. 2.a will be placed randomly by the DNR throughout the marked area to check for residual basal area, crop trees and must-cut trees. A 10 BAF prism will be used on these "point sample" check plots. The number of check-plots to be established in any one check area will be equal to at least 10% of the check area acreage, e.g. 40 acres will require at least four check plots.

- 1) Acceptable residual basal area will be defined as within plus or minus 10 square foot of the basal area goal for the check area. In addition, at least 70% of the plots sampled must come within this 10 square foot target.

There are exceptions to the "plus or minus 10 square foot" rule. An inspector can accept plots that fall outside this limit if the inspector feels there is an acceptable silvicultural justification. For example, if the prescription calls for marking to 80 sq. ft. and the initial BA of the point is 60 sq. ft. and one tree with Eutypella canker was marked so that the residual BA is 50 sq. ft., this point could be considered acceptable.

- 2) The inspector, on each individual check plot, should be able to identify at least one crop tree. At least 70% of all plots sampled should contain at least one crop tree.
- 3) In hardwood stands where marking for crop tree release, the inspector, on each individual check plot, should be able to identify at least two must-cut trees adjoining a crop tree in situations where crop trees are greater than 9" DBH. In situations where crop trees are less than 9" DBH, the inspector should be able to identify a seven foot wide "release zone" around the crown of a crop tree. All the trees that make up this release zone will be considered must-cut trees and should be marked. Overall, at least 70% of plots sampled should contain at least two must-cut trees or one seven foot release zone.

If any of these three check items (residual BA, crop trees, must-cut trees) fall outside of the tolerance levels as outlined, the area will be considered improperly marked. The contractor will then have to remark the area by adding or eliminating paint marks as required. The DNR will then establish another set of check-points (different than the original) equal to at least 10% of the check area. The area will then be rechecked for residual basal area, crop trees and must cut trees. If the remarking falls within the established tolerances, the area will be considered properly marked. If not, the marking will be considered improper and the process will be repeated. If at the end of the third re-marking the area is still found to be improperly marked, liquidated damages will be assessed equal to 40% of the total payment of the area checked and, at the option of the DNR, the individual may be decertified.

Some marking jobs, especially in hardwoods, can be quite variable. Because of this variation, the prescription associated with an Bid Item may define inspection procedures that vary from the standards. If this occurs, then the prescription standards take precedent.

EXAMPLE
Marking Prescription Quality Check¹

Point	Initial BA	Residual BA	Within Target?	Crop Tree	Must Cut	
					=9" DBH	<9" DBH
		Target = 80	±10%			
1	100	80	Y	Y	Y	
2	120	100		Y		
3	80	70	Y	Y	Y	
4	90	90	Y			
5	120	80	Y	Y		Y
6	130	100		Y	Y	
7	60	50	Y ²	Y	Y	
8	90	80	Y	Y		Y
9	80	70	Y	Y	Y	
10	70	50				
	94 ³	77 ³	7	8	5	2
					7	

¹ From form R4039-3 Marking Prescription & Sawlog Check, appendix 15

²BA is low, but crop tree released with a must cut tree. O.K. point. (The inspector should make footnotes to explain exceptions.)

³Note that these averages include all points, even the point with low initial BA (60) and residual BA (50). The inspector does not use these numbers to evaluate the quality. These numbers are only calculated for general information. The evaluation of acceptable residual BA is done in the column "Within Target". In this case its based on 7 out of 10 points being a 'Yes'. It is not based on the average residual of 77 sq. ft.

Residual BA: $7/10 * 100 = 70\%$

Note: 70% to pass.

Crop Trees: $8/10 * 100 = 80\%$

Note: 70% to pass.

Must Cut Trees: $7/10 * 100 = 70\%$

Note: 70% to pass.

3. Inspection for accuracy in cumulative VBAR tally cruised stands.

Where the trees were sampled by point cruising with cumulative VBAR tally, the DNR will check the accuracy of the cruise by inspecting at least 10% of the cruise points. The number of check-points to be established in any one check area will be equal to at least 10% of the check area acreage, e.g. a 40 acre check area will require at least four check points.

On the check-point, all trees that are "in" will be measured and tallied by species – total trees and sticks and total sawlog trees and sawlog sticks will be recorded. The Contractor's tally card will be compared to the inspectors tally. Points will be assigned to the Contractor-tally based on a comparison with the DNR tally. One point will be assigned for each stick and each tree difference, by species, between the Contractor and the DNR. If a species is miss-identified, but the tree was cruised, points off for that tree will only be recorded once (see example). A perfect score for a check-point would occur when the Contractor's sticks and trees, by species, equal the DNR tally (in this case, no points would be assessed). A DNR tally of 10 sticks and 3 trees for sugar maple total trees and 3 sticks and 1 tree for sugar maple sawlog trees compared to a Contractor tally of 8 sticks and 2 trees for sugar maple

total trees and 2 sticks and 1 tree for sugar maple sawlog trees would produce a score of 4.

The final score will be determined by taking the sum of all the Contractor's points and comparing them to the DNR total (all sticks plus all trees). If the Contractor score falls between 0%-20%, then the Contractor tally will be considered accurate. If the Contractor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the Contractor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After re-cruising, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the Contractor score falls between 0%-20%, then the Contractor tally will be considered accurate. If the Contractor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the Contractor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After the second re-cruising, the DNR will again establish new check-points equal to at least 10% of the check area. If the Contractor's score falls between 0%-20%, then the Contractor's tally will be considered accurate and there will be no damages assessed. If the Contractor's score is greater than 20%, the tally will be considered inaccurate. At the end of the third re-cruise, if the Contractor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Cumulative Tally Check Cruise (form R4039-6, appendix 15)

Pt	Sp	Contractor's				DNR's				Points Off			
		Total		Logs		Total		Logs		Total		Logs	
		Tr	St	Tr	St	Tr	St	Tr	St	Tr	St	Tr	St
1	01	1	1	1	1	1	1	1	1	0	0	0	0
8	03	5	20	2	4	4	16	2	4	1	4	0	0
8	05	1	6	0	0	0	0	0	0	1	6	0	0
8	06	0	0	0	0	1	6	0	0	0 ¹	0 ¹	0	0
	--	--	--	--	--	12	39	5	9	3	13	0	2
						65				18			

¹On point 8, the Contractor called a white ash a basswood. Note that she had 1 basswood tree with 6 sticks and no white ash trees. She should have cruised 0 basswood trees and 1 white ash with 6 sticks. Since the points off for calling a white ash a basswood were taken on the basswood line of the tally sheet, there are no additional points taken on the white ash line of the cruise sheet. This is done to prevent 'double jeopardy' for missing a species.

SCORE: $18/65 * 100 = 28\%$ **Note:** =20% to pass.

4. Inspection for accuracy in VBAR tally cruised stands.

Where the trees were sampled by point cruising with VBAR tally, the DNR will check the accuracy of the cruise by inspecting at least 10% of the cruise points. The number of check-points to be established in any one check area will be at least 10% of the check area acreage, e.g. a 40 acre check area will require at least four check points.

On the check-point, all trees that are "in" will be measured and tallied – number of pulpwood sticks and the number of sawlog sticks and the number of trees for each combination of number of pulpwood sticks and number of sawlog sticks by species. When all check points are measured, the volume will be determined for the total DNR check points and for the Contractor's measurement on those same check-points.

The final score will be determined by comparing the Contractor's check-point volume to the DNR check-point volume. If the Contractor volume is within 10% of the DNR volume, the Contractor tally will be considered accurate. If the Contractor's volume is more than 10% off from the DNR volume, then the tally will be considered inaccurate and the Contractor will have to re-cruise all points in the check area.

After re-cruising, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the Contractor's volume is within 10% of the DNR volume, then the Contractor tally will be considered accurate. If the Contractor's volume is more than 10% off from the DNR volume, then the tally will be considered inaccurate and the Contractor will have to re-cruise all points in the check area.

After the second re-cruising, the DNR will again establish new check-points equal to at least 10% of the check area. If the Contractor's volume is within 10% of the DNR volume, then the Contractor's tally will be considered accurate and there will be no damages assessed. If the Contractor's volume is more than 10% off from the DNR volume, the tally will be considered inaccurate. At the end of the third re-cruise, if the Contractor's volume is more than 10% off from the DNR volume, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

5. Inspection for adequacy of establishing interior payment unit boundary marking.
 - a) The DNR will check the placement of unit boundaries. Unless specific landmarks have been identified on the timber sale map, the unit boundary must be within plus or minus two chains of the location as shown on the map. Paint marks for the unit boundaries shall be placed on two sides of the tree with each mark facing out into the sale. If either requirement is not met, the Contractor may be required to relocate the unit boundary or repaint the unit lines to the satisfaction of the administrator. Repainting lines may include painting over the unsatisfactory line with a neutral color of paint, as well as painting a new line
 - b) Paint lines shall meet visibility standards (Reference Section 1.104, Specific Tasks, c.3).
6. Inspection for adequacy of establishing cutting boundaries.

- a) The DNR will check the placement of the cutting boundary. The cutting boundary shall adhere to the stand boundaries, for those stands designated to be cut and as shown on the furnished compartment map. If only parts of some stands are to be included in the sale, or some other alteration from the stand boundary as shown on the compartment map is required, these differences will be clearly detailed on the prescription and on the compartment map.
- b) If changes to the cutting boundary established in the field occur, it should be obvious to the inspector why a change was made. If not obvious to the inspector, the Contractor should be able to provide a reasonable explanation as to why the established sale boundary differs. If an adequate explanation is not given, the Contractor may be required to reestablish the sale boundary to the satisfaction of the inspector.
- c) Paint lines shall meet visibility standards (Reference Section 1.104, Specific Tasks, d.3).

7. Inspection for accuracy of establishing property boundaries.

- a) The DNR will check the location of property lines established between state and private property. The location of any property line must be run to an accuracy of no more than two feet deviation from true over 1,320 feet of line run. This degree of accuracy must be maintained for **each** 1,320 feet of line established. Deviations will not be allowed to accumulate over distances longer than 1,320 feet. The contractor will be required to relocate and repaint the property line if it is found to exceed this standard.
- b) Paint lines shall meet visibility standards (Reference Section 1.104, Specific Tasks, e.5).

8. Inspection for accuracy of area determination.

- a) If GPS is used, the contractor will be checked for adherence to the standards described in Section 1.104, Specific Tasks, f).
- b) If string chain and compass are used, the minimum error of closure ratio should not exceed:
 - 1) 1:50 for 20 acres or less.
 - 2) 1:100 for areas greater than 20 acres.

The DNR may check the area determination of a sale. The sale area (e.g. unit, polygon, etc.) as submitted by the Contractor must fall within plus or minus 5% of a check traverse as performed by a State Inspector. The Contractor may be required to re-traverse the sale, relocate the sale boundary and/or repaint the

sale boundary if the error is found to exceed this + or – 5% tolerance figure. In addition, liquidated damages equal to 10% of the bid price will be charged.

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

1. Contractor must provide the staffing assigned for each item bid to the DNR. DNR reserves the right to approve and disapprove staff assigned to projects. Substitution of staff after award due to change of employment status and/or unforeseen circumstances may only be made with prior approval of the State.
2. Contractor shall possess or obtain at their own expense suitable tools and equipment to carry out the assigned tasks, including ATV's and snowmobiles as required to access isolated sites. The DNR will supply only those items as specified in Section I-F, below.
3. Certification: The contractor or his/her representative must be certified to prepare State timber sales. The Contractor also agrees to maintain certification for first line supervisors and on-site field workers, and to complete all contracted work according to DNR standards.
 - a) To work on State of Michigan timber sales without supervision from a DNR employee, you must complete a task book (Appendix 10).
 - b) Items 1 through 4 of the task book must be completed before fieldwork can be started, i.e. classroom, written test, and field tests. You must complete these items to be Pre-qualified to bid.
 - c) Items 5 and 6 of the task book will be completed in the field on your first State job after completing Items 1 through 4. Some items may wait for a field site that includes those features..
 - d) Items 7 to 11 of the task book are specific to the type of fieldwork that you will be performing. You need to complete these items in the field on the first State job you perform requiring this work. For example, Item 8 is "Demonstrate Ability to Cruise Timber." You must complete this item on your first State cruising job to continue cruising timber on State land. You will then be certified as a Cruiser and this will be documented in the Certification section of the task book.
 - e) To maintain timber marker and cruiser certification, you must complete Items 1 and 2 of the task book on a yearly basis.
4. Pre-work meeting: Before a bid Item can be started, the Contractor will arrange with the DNR a pre-work meeting between the Contractor, the Contractor's field staff, and the local Unit. If a contract employee is not present at the meeting, approval from the Unit Manager is required prior to the employee working on the bid Item.

Staffing:

The Contractor shall staff the project with personnel who possess talent and expertise in the field of Forestry.

- a. Contractor or his/her representative shall possess the following qualifications:

- 1) a bachelor's, or higher, degree in forestry from an accredited forestry school or a 2-year technical degree in forestry or equivalent education and work experience.
 - 2) knowledge of and experience in silviculture of upland and lowland forest types common to Michigan, with special emphasis on northern hardwoods.
 - 3) certification as a DNR – FMFM Timber Marker and Cruiser.
- b. All on-site field workers shall possess the following qualifications:

- 1) possess an associate's degree in forest technology, OR
- 2) have completed two years of a B.S. in forestry, OR
- 3) have a minimum of two years of technical forestry experience including significant time working in timber marking in northern hardwood, northern red oak and red pine as well as other forest types common to Michigan.

AND, in addition to meeting one of the above requirements:

- 4) be certified as a DNR – FMFM Timber Marker and Cruiser.

c. Above certifications will be maintained by:

- 1) satisfactory performance, And
- 2) annual attendance at the Marking and Cruising Course and passing the written test.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The State will provide appropriate background and resource data and supplies as listed below. These materials will be on loan to the Contractor when needed, but must remain under the control of the DNR office from which they are loaned according to that office-established practice for making such loans. Items such as aerial photographs and original maps should be handled with care, not taken into the field or placed in other potentially damaging situations, unless absolutely necessary. They should be returned as soon as possible, as they are a valuable resource used by many individuals, within and outside of the DNR. Contractors will be required to reimburse the DNR for the replacement value of items damaged beyond normal wear and tear.

1. Aerial photographs of the treatment area covered under the contract showing:
 - a. Treatment area boundaries
 - b. Access roads
 - c. Private or other non-DNR owned lands within or adjacent to treatment areas
 - d. Lakes, streams, rivers, and wetlands
2. Cover type maps of the area under the contract showing:

- a. Treatment area boundaries
 - b. GPS coordinates for location of critical lines (if available)
 - c. Access roads
 - d. Private or other non-DNR owned lands within or adjacent to treatment areas (including permission to use/cross non-State owned areas, if necessary)
 - e. Lakes, streams, rivers, and wetlands
 - f. Prescribed treatments
3. Paint. Paint dilution will not be allowed. Paint specifications and MSDS sheets will be available to potential bidders. Paint delivery and/or pick-up will be coordinated with the local office. Contractor's work schedule must coincide with the DNR work schedule for paint supply. The DNR will not be available on weekends or evenings.

The following individual will be the Project Manager:

Douglas Heym
Department of Natural Resources
Forest, Mineral and Fire Management Division
Mason Bldg., 5th Floor
P.O. Box 30452
Lansing, MI 48909-7952
Email: Heymd@michigan.gov
Phone: 517.335.3342

The following individual will be the Contract Compliance Inspector:

Mary Nowinski
Department of Natural Resources
Forest, Mineral and Fire Management Division
Mason Bldg., 5th Floor
PO Box 30452
Lansing, MI 48909-7952
Email: Nowinskm@michigan.gov
Phone: 517.241.2100

The following individual will be the Contract Administrator:

Kristina A. Squibb
Financial Services
Procurement Services
Department of Natural Resources
Mason Bldg, 6th Floor
PO Box 30028
Lansing, MI 48909
Email: Squibbk@michigan.gov
Phone: 517.373.7987

1.203 OTHER ROLES AND RESPONSIBILITIES (RESERVED)

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT (RESERVED)

1.302 REPORTS/PROJECT CONTROL

Project Control

The Contractor will carry out this project under the direction and control of the Department of Natural Resources, Forest, Mineral, and Fire Management Division (DNR FMFM). Although there will be continuous liaison with the Contractor team, Contract Compliance Inspector and/or Project Manager, there may be periodic meetings with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems.

Reports

1. Monthly reports. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated which should be brought to the attention of the Contract Compliance Inspector and/or Project Manager and notification of any significant deviation from previously agreed-upon work plans.

Monthly reports will be submitted electronically to the Contract Compliance Inspector and to the local Management Unit in either a table or spreadsheet format. It shall contain the status of each project as listed by unit, sale name, compartment, and stand. It must show by item, the actual and anticipated due date, and indicate all work done at the time of the report, e.g. 100 of 200 acres marked, all line work complete.

2. Timber sale report. The final timber sale report will contain the following:
 - a) All cruising and marking data summarized on approved forms suitable for data entry into the Timber Sale PC program.
 - b) Map showing the location of cruise plots.
 - c) Record of paint used, by individual sale or treatment area.
 - d) Line maps and GPS data.
 - e) A hard copy map (plus a digital map if available) indicating the area treated and showing treatment boundaries (with GPS coordinates if possible), strata boundaries (with GPS coordinates if possible), and locations of plot centers (with GPS coordinates if possible) for all sample plots taken.

1.4 Project Management

1.401 ISSUE MANAGEMENT (RESERVED)

1.402 RISK MANAGEMENT (RESERVED)

1.403 CHANGE MANAGEMENT

If a proposed contract change is approved by the Project Manager and Contract Compliance Inspector, and the Contract Administrator agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), DNR Procurement Services will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by DNR Procurement Services, risk non-payment for the out-of-scope/pricing products and/or services.**

1.5 Acceptance

1.501 CRITERIA (RESERVED)

1.502 FINAL ACCEPTANCE (RESERVED)

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

Prices quoted for work are firm for bid item. The invoice 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.

1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

1. Decertification

A field worker, i.e. Contractor, Contractor's representative, supervisor, or on-site field worker, may be decertified if their performance is consistently unsatisfactory. The following procedure will apply:

In the event that the Unit Manager or his/her representative is dissatisfied with the quality of an individual's field work, the Unit Manager or his/her representative will bring it to the Contractor's attention. The Unit Manager or his/her representative will spend a reasonable amount of time in the field with the individual to explain the reasons for dissatisfaction and seek appropriate improvements. The Unit Manager or his/her representative will use the Timber Sale Preparation Checklist in Appendices 9 to document contract performance and corrective action taken.

If the Unit Manager or his/her representative remains dissatisfied with the individual's work and feels further time in the field with the individual would be unproductive, he/she will call for a

performance review of the individual's work for the purpose of determining whether the individual should be decertified.

A Timber Management Specialist (appendix 2), and the contractor or his/her representative will conduct this performance review.

If at the completion of the review, the Timber Management Specialist finds the individual should not be certified, the individual may be decertified. The Contract Compliance Inspector and/or Project Manager will make the final decision on decertification after hearing and carefully weighing the details. Decertification will result in the immediate termination of all work by the decertified individual. To again become certified, the individual must complete a task book. The decertification of a contractor or his/her representative may result in the termination of an awarded bid item.

2. Confidentiality and Restrictions for Bidding on Timber Sale

To be fair to all potential bidders on timber sales generated from this contract, contractor agrees not to share information generated under this contract with outside parties. Failure to comply with this requirement shall result in the current contract being cancelled, the bidder with whom information was shared being disqualified from bidding on the work related to this contract, AND the Contractor being excluded from bidding on further contracts.

All data gathered, generated, or otherwise obtained from this contractual service will be the exclusive property of the DNR from the time that such gathering, generation, or other method of obtaining data begins. Likewise all records and copies of records, in either electronic or any other format, made in the process of gathering, handling, analyzing, computing or reporting of data collected during the performance of these contractual services shall be the exclusive property of the DNR and shall be provided to the DNR at the conclusion of these contractual services, or prior to that time if requested in writing by the Project Manager. These data shall not be shared with any party not covered in these contractual services unless specifically requested by the DNR.

The Contractor will not be permitted to bid on timber sales resulting from his/her own cruising, marking, or other contract tasks.

Article 2 – General Terms and Conditions

NOTE: THE FOLLOWING TERMS AND CONDITIONS WILL BE INCLUDED IN ANY CONTRACT THAT IS WRITTEN BASED UPON AWARDS FROM FUTURE SOLICITATIONS.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

(a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

2.014 Issuing Office

This Contract is issued by the Department of Natural Resources, Procurement Services (collectively, including all other relevant State of Michigan departments and agencies, the “State”). Procurement Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Procurement Services is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contract Administrator within Procurement Services for this Contract is:

Kristina A. Squibb
Financial Services
Procurement Services
Department of Natural Resources
Mason Bldg, 6th Floor
PO Box 30028
Lansing, MI 48909
Email: Squibbk@michigan.gov
Phone: 517.373.7987

2.015 Contract Compliance Inspector

Upon receipt at Procurement Services of the properly executed Contract, it is anticipated that the person named below, or any other person so designated, be authorized to monitor the Contract on a day-to-day basis, during its term. However, monitoring of this Contract implies **no**

authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Procurement Services. The Contract Compliance Inspector for this Contract is:

Mary Nowinski
Department of Natural Resources
Forest, Mineral and Fire Management Division
Mason Bldg., 5th Floor
PO Box 30452
Lansing, MI 48909-7952
Email: Nowinskm@michigan.gov
Phone: 517.241.2100

2.016 Project Manager

The following individual will oversee and coordinate the day-to-day activities for the Contract during its term:

Douglas Heym
Department of Natural Resources
Forest, Mineral and Fire Management Division
Mason Bldg., 5th Floor
P.O. Box 30452
Lansing, MI 48909-7952
Email: Heymd@michigan.gov
Phone: 517.335.3342

2.020 Contract Objectives/Scope/Background

2.021 Background (RESERVED)

2.022 Purpose

2.023 Objectives and Scope (RESERVED)

2.024 Interpretation (RESERVED)

2.025 Form, Function and Utility (RESERVED)

2.030 Legal Effect and Term

2.031 Legal Effect

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in

writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), and approved and signed by all the parties. 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 RFI.
- B. Any addenda to that RFI.
- C. The Contractor's response to that RFI.

The State shall not be bound by any part(s) of the bidder's response to the RFI which contains information, options, conditions, terms, or prices neither requested nor required in the RFI. 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.

2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to 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.

2.033 Renewal(s)

This 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. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel

2.041 Contractor Personnel

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

2.042 Contractor Identification

Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.043 Cooperation with Third Parties

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

2.044 Subcontracting by Contractor

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

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Natural Resources, Procurement Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards (RESERVED)

2.052 PM Methodology Standards (RESERVED)

2.053 Adherence to Portal Technology Tools (RESERVED)

2.054 Acceptable Use Policy (RESERVED)

2.060 Deliverables

2.061 Ordering

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

2.062 Software (RESERVED)

2.063 Hardware (RESERVED)

2.064 Equipment to be New and Prohibited Products (RESERVED)

2.070 Performance

2.071 Performance, In General

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

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages

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

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

C. Liquidated damages will be assessed as detailed in Section 1.104, Compliance and Inspection Procedures.

D. Liquidated damages will be charged for Items not completed by the due date listed on the prescription. As defined, completion means that the Unit Manager or his/her representative has received, inspected and approved all work. In an Item does not pass inspection, there will be no extension of time. Liquidated damages for late completion are defined as ½% of the Item price per day.

2.074 Bankruptcy

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

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

2.075 Time is of the Essence (RESERVED)

2.076 Service Level Agreements (SLAs) (RESERVED)

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities (RESERVED)

2.082 Delivery of Deliverables (RESERVED)

2.083 Testing (RESERVED)

2.084 Approval of Deliverables, In General (RESERVED)

2.085 Process For Approval of Written Deliverables (RESERVED)

2.086 Process for Approval of Services (RESERVED)

2.087 Process for Approval of Physical Deliverables (RESERVED)

2.088 Final Acceptance (RESERVED)

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables
Prices quoted for work are firm for bid item.

(b) Adjustments for Reductions in Scope of Services/Deliverables
If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

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

2.092 Invoicing and Payment Procedures and Terms

Contractor may submit an invoice to the Unit Manager upon completion of each item. The invoice should include: Item description, dollar amount to be paid, date, and P.O. number. Completion means that all information, e.g., cruise data, GPS files, summary sheets, sketch maps, etc., is submitted and a final inspection has been completed. The Unit Manager or his/her representative will complete a Timber Sale Preparation Checklist (Appendix 9) to

determine completeness within 10 working days of receipt of invoice. This final inspection is required for work to be considered complete, the invoice approved, and payment made. The Contractor is responsible for insuring that the final State inspection is accomplished before the bid item due date. There will be no additional time granted for the bid item if the State inspection succeeding the invoice indicates that additional work is needed. For example, the State inspection occurs within 10 days of invoice receipt and this inspection indicates that the work is not complete or that the work does not meet contract standards and the Contractor cannot finish the work and schedule a State inspection before the bid item due date, then liquidated damages may be charged. This final inspection will be used as the basis for a Vendor Performance Report which will be entered into the State of Michigan's accounting database (MAIN) as a permanent record. All payments shall be made in accordance with the Prompt Payment Act, P.A. 279 of 1984.

2.093 State Funding Obligation

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

2.094 Holdback (RESERVED)

2.095 Electronic Payment Availability

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

2.100 Contract Management

2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

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

2.103 Reports (RESERVED)

2.104 System Changes (RESERVED)

2.105 Reserved

2.106 Change Requests

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

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

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

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

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Natural Resources, Procurement Services.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools (RESERVED)

2.110 Records and Inspections

2.111 Records and Inspections

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

2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be

carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks (RESERVED)

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

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

2.152 Confidentiality

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

2.153 Protection of Confidential Information

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

2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights (RESERVED)

2.162 Source Code Escrow (RESERVED)

2.163 Rights in Data

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will 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 Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

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

2.164 Ownership of Materials (RESERVED)

2.165 Standard Software (RESERVED)

2.166 Pre-existing Materials for Custom Software Deliverables (RESERVED)

2.167 General Skills (RESERVED)

2.170 Warranties and Representations

2.171 Warranties and Representations (RESERVED)

2.172 Software Warranties (RESERVED)

2.173 Equipment Warranty (RESERVED)

2.174 Physical Media Warranty (RESERVED)

2.175a DISCLAIMER (RESERVED)

2.175b Standard Warranties (RESERVED)

2.176 Consequences for Breach (RESERVED)

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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

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

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

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State. See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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

Before the Contract is signed by both parties, the Contractor must furnish to DNR-Procurement Services, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded

under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to DNR-Procurement Services. The notice must include the Contract or Purchase Order number affected and be mailed to: Department of Natural Resources, Financial Services, Procurement Services, P.O. Box 30028, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

\$500,000 General Aggregate Limit other than Products/Completed Operations
\$500,000 Products/Completed Operations Aggregate Limit
\$100,000 Personal & Advertising Injury Limit
\$100,000 Each Occurrence Limit
\$100,000 Fire Damage Limit (any one fire)

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:
\$100,000 each accident

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or

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

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State

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

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to the value of the issued Purchase Order for the bid item. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Purchase Order for the bid item.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall 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 this 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 this Contract.

2.202 Excusable Failure

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

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

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

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this 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 this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.

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

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

2.212 Termination for Convenience

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

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

2.213 Non-Appropriation

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

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

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

2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (1) stop all work as specified in the notice of termination, (2) 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 this Contract that may be in Contractor's possession, (3) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (4) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (5) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

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

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts shall include, but are not limited to, the following:

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

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

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, 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.

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

2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor

2.221 Termination by Contractor

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

2.230 Stop Work

2.231 Stop Work Orders

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

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 Allowance of Contractor Costs

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

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with DNR Procurement Services, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, DNR Procurement Services shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any

applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

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

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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

Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 Disclosure of Litigation

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

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

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

(c) Contractor shall make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the DNR Procurement Services.

(2) Contractor shall also notify the DNR Procurement Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor shall also notify DNR Procurement Services within 30 days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

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

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of

such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 General

2.291 Amendments

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

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed

assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

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

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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

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

State:
State of Michigan
Financial Services

Procurement Services
Attention: Kristina A. Squibb
PO Box 30028
530 West Allegan
Lansing, Michigan 48909

with a copy to:
State of Michigan
Department of Natural Resources
Forest, Mineral, and Fire Management Division
Attention: Douglas Heym
P.O. Box 30452
Lansing, Michigan 48909

Contractor(s):

To the address indicated on the front cover page of the Contract.

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution

(a) Media Releases

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

(b) Contract Distribution

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Prevailing Wage (RESERVED)

2.307 Call Center Disclosure (RESERVED)

2.308 Future Bidding Preclusion

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

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL (RESERVED)

2.322 State Employee Purchases (RESERVED)

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html

http://www.archives.gov/federal_register/codification/executive_order/12549.html

http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf

<http://www.epls.gov/epl/servlet/EPLSSearchMain/1>