

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET September 1, 2010
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO.1
TO
CONTRACT NO. 071B0200319
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Retired Engineer Technical Assistance Foundation 32401 West Eight Mile Road Livonia, MI 48152 Email: dicks@retaf.org	TELEPHONE: Richard W. Savage (248) 478-8030
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-6327 Mary Ostrowski
Contract Compliance Inspector: David Herb (517) 241-8176 Retired Engineer Technical Assistance Program (RETAP) - DELEG	
CONTRACT PERIOD: 1.5 yrs. + 2 one-year options From: August 18, 2010 To: February 17, 2012	
TERMS <p style="text-align: center;">Net 45 Days</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately the Contractor name as listed above is **CORRECTED** to:

Retired Engineer Technical Assistance Foundation

All other specifications, pricing, terms and conditions remain unchanged.

AUTHORITY/REASON:

Per DTMB Purchasing Operations

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,043,851.45

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET August 19, 2010
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
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MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #07110200152, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$1,043,851.45</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07110200152.

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

FOR THE CONTRACTOR:

**Retired Engineer Technical Assistance
 Foundation**

 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

FOR THE STATE:

 Signature

Kevin Dunn, Buyer Manager

 Name/Title

**Professional Services Division,
 Purchasing Operations**

 Division

 Date



STATE OF MICHIGAN
Department of Technology Management and Budget
Purchasing Operations

Contract No. 071B0200319
Retired Engineer Technical Assistance Program (RETAP)
Technical Assistance (TA) for the Department of Energy, Labor, and Economic Growth

Buyer Name: Mary Ostrowski
Telephone Number: 517-373-6327
E-Mail Address: ostrowskim@michigan.gov



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DEFINITIONS

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

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

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

BES DELEG's Bureau of Energy Systems

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

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

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

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

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

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

DTMB means the Michigan Department of Technology Management and Budget.

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

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

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

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

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

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

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



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

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

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

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

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

SLA means Service Level Agreement.

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

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

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

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

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

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

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This Contract is to provide on-site technical assistance to identify energy efficiency and pollution prevention (P2) opportunities and any cost savings resulting from the assistance. The goal is to facilitate and measure reductions in energy used, environmental waste generated, and costs incurred in the State by businesses, institutions, and government agencies receiving the on-site technical assistance. The primary activities for the Contractor will be to organize and coordinate the work of the retired engineers and scientists participating in the Retired Engineer Technical Assistance Program (RETAP) for the technical assistance. These activities include recruiting and training RETAP assessors, marketing RETAP services, completing on-site assessments/audits, conducting technology transfer activities, performing ongoing program measurement and reporting, developing quality assurance measures, and other energy efficiency and P2 technical assistance activities as identified by the DELEG, BES RETAP Manager stated in 2.022.

Funding Source

This project is funded by the U.S. Department of Energy, State Energy Program PY2009, allocated under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5. Please refer to Attachment I, [Article 3 American Recovery and Investment Act Solicitation & Award Terms](#) for requirements associated with ARRA funding. The goals of the State Energy Program are:

- A. Increase energy efficiency to reduce energy costs and consumption for consumers, businesses, and government.
- B. Reduce reliance on imported energy.
- C. Improve the reliability of electricity, fuel supply, and the delivery of energy services.
- D. Reduce the impacts of energy production and use on the environment.

1.012 Background

The Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended; Sections 324.14301 et seq. and 324.14501 et seq., delineates activities to be undertaken by the State to advance P2. It stipulates the provision of technical assistance to businesses and institutions, and prescribes an emphasis on in-plant P2. Section 324.14511 established the RETAP to provide on-site P2 assistance. For purposes of this RFP, P2 opportunities include energy efficiency opportunities.

The RETAP was initiated as a pilot program in 1994, and established as a permanent program in 1998 PA 288 Section 19608 et seq. The structure of the RETAP was designed to encourage Michigan industry to request P2 assistance. Currently, businesses with 500 or fewer full-time employees in the State and institutions of any size are eligible. To date, the RETAP has completed over 1400 on-site P2 assessments at Michigan businesses and institutions, and provided over 1500 technical assistance hours to supplement the on-site P2 assessments.

The RETAP services are non-regulatory and voluntary, utilizing Michigan-based retired professionals. The assistance is provided free of charge as further incentive for facilities to request this assistance. The RETAP does not provide assistance with environmental compliance, and the on-site assessments are not environmental compliance audits. Facilities are not required to have a RETAP assessment or implement the assessment recommendations, although potential cost savings provide the impetus.

Currently, the RETAP professionals are located throughout the State. They have received training and have experience in conducting on-site energy efficiency and P2 assessments. The Contractor will subcontract with these individuals and recruit additional retired professionals to maintain a diverse pool of expertise to provide assistance in a variety of industrial sectors, geographical areas within Michigan, building or process systems, and media of waste. The DELEG, Bureau of Energy Systems (BES) will provide a list of RETAP professionals currently active in the RETAP to the Contractor.



1.020 Scope of Work and Deliverables

1.021 In Scope

The overall purpose of the RETAP is to fulfill the on-site, P2 technical assistance obligations of the State under Section 324.14504 of NREPA, 1994 PA 451, as amended. Section 324.14511 directs the State to establish the priorities for RETAP technical services based on demand, funds available, and applicant needs, taking into consideration the most effective use of the assistance. The DELEG, BES will manage and monitor the RETAP and be responsible for establishing policies and procedures for RETAP assistance. The DELEG, BES reserves the right to refocus RETAP goals and objectives. The Contractor will carry out this project under the direction and control of the DELEG, BES Project Manager. Definitions pertinent to this Statement of Work are provided in Attachment B.

The Contractor will be responsible for the daily operation of RETAP technical services. The primary activity for the Contractor will be to organize and coordinate the work of the RETAP professionals for the on-site energy efficiency and P2 technical assistance, as follows:

1. General

- A. The Contractor must perform the daily operations of RETAP technical services in accordance with the policies and procedures established for the RETAP by the DELEG, BES.
- B. The Contractor must conduct all activities for managing, organizing, supervising, scheduling, and paying the retired professionals (as subcontractors). The Contractor must determine the rate of compensation for the RETAP professionals.
- C. The Contractor must maintain the ability to have regular communication with the RETAP professionals.
- D. The Contractor must have the infrastructure to respond to and process inquiries, including from the public and the RETAP Manager, during the business hours of 9:00 AM to 3:00 PM, Monday thru Friday.
- E. The Contractor must have the infrastructure to report performance, measurement, and financial data and reports electronically in a format compatible with the DELEG, BES software requirements.
- F. The Contractor must assist the DELEG, BES Project Manager with all activities, as necessary, for a successful transition of the RETAP from one contractor to the next, including transferring all records and files.

2. On-site Technical Assistance

- A. The Contractor is responsible for performing 22,500 Technical Assistance Hours to complete on-site energy efficiency assessments on a minimum of 400 buildings, on-site P2 assessments at a minimum of 50 facilities, and energy audits on a minimum of 25 buildings during the Contract period. In general, assessments and energy audits will be limited to occupied buildings/facilities with a minimum floor space of not less than 20,000 square feet and a minimum annual energy cost of not less than \$15,000. Note: An on-site P2 assessment is an evaluation of the equipment, practices, and operations of a facility by one or more RETAP assessors to recommend P2 and cost saving opportunities. It is not regulatory and does not include in-depth analyses of operational efficiencies or required engineering specifications for the implementation of recommendations.
- B. The Contractor is responsible for providing a written report to each facility that undergoes an on-site assessment or energy audit by the RETAP. [Note: Many facilities encompass multiple buildings. Hence, an assessment report typically includes the recommendations for multiple buildings. However, energy audit reports will normally be restricted to a single building due to the in-depth analyses/complexities of completing energy audits.] Each report will detail the energy



efficiency, P2, and cost saving opportunities identified by an on-site assessment or energy audit (as appropriate), and provide sufficient guidance for making business decisions to implement the recommendations based on a simple payback approach where possible. The report will be provided to the assessed facility within 45 to 60 days after the on-site assessment or energy audit is completed. The reports will be printed double-sided on recycled paper. The Contractor must additionally provide an electronic copy of each report to the RETAP Manager.

- C. The Contractor must perform a minimum of 2,500 Technical Assistance Hours to complete approximately 100 Technical Assistance Hours requests during the Contract period to supplement the on-site assessments with assistance by the RETAP professionals for specialized assignments approved by the RETAP Manager to the Contractor. Technical Assistance Hours requests encompass the technical assistance activities assigned to the RETAP professionals that fall outside the scope of an on-site energy efficiency and/or P2 assessment/report, such as detailed cost analyses, process mapping, extensive P2 research, and evaluations of grant proposals. Technical Assistance Hours requests may involve on-site technical assistance at facilities, and may be directed by the DELEG, BES Project Manager to achieving the goals and objectives of the DELEG, BES programs/projects.
- D. The Contractor is responsible for providing a summary report to the originating entity for the Technical Assistance Hours request. Each report must summarize the technical assistance requested and the RETAP engineer's recommendations. Where appropriate, the report should include any energy, P2, and cost savings identified, and provide sufficient guidance for making business decisions to implement the recommendations based on a simple payback approach. The report will be mailed to the assessed facility within 25 days after the on-site Technical Assistance Hours request is completed. The reports will be printed double-sided on recycled paper. The Contractor will additionally provide an electronic copy of each report to the RETAP Manager.
- E. The Contractor will be compensated on an average Technical Assistance Hour unit price basis for the on-site technical assistance. The Technical Assistance Hour unit price must incorporate all costs associated with providing the on-site technical assistance and delivering the required written reports, including Contractor staffing costs, subcontractor costs, traveling costs, equipment costs, supplies and materials, overhead/indirect costs, etc.
- F. The Contractor will be responsible for organizing, managing, supervising, and scheduling the RETAP professionals who will conduct the on-site energy efficiency assessments, P2 assessments, energy audits, as well as performing the Technical Assistance Hours requests.

3. Recruitment

- A. The Contractor will be responsible for recruiting additional retired professionals to maintain a diverse pool of expertise to provide assistance in a variety of industrial sectors, geographical areas within Michigan, building or process systems, as well as media of waste. The Contractor must conduct the recruitment efforts with input from the RETAP Manager. The Contractor and the DELEG, BES must jointly determine the necessity for recruitment. Recruitment must comply with State of Michigan hiring guidelines for nondiscrimination.

4. Training

- A. The Contractor is responsible for assessing the skill levels and identifying the training needs of the RETAP professionals in consultation with the DELEG, BES Project Manager. The goal is to provide assessors with practical energy efficiency, process efficiency, P2, energy auditing etc. training that will improve the quality and depth of the recommendations in the assessment reports. The Contractor is responsible for paying the RETAP assessors to attend the training sessions, including all costs for food and lodging. Assessors must be paid for their hours worked and be reimbursed for travel. Time related to conducting on-site P2 assessments as part of the training must be covered under the "On-site P2 Assessments" task. Travel expenses will be reimbursed at the per diem rates given in Attachment C. The mileage reimbursement rate will be limited to the Standard Mileage Rate set by the DTMB.
- B. The Contractor is responsible for conducting up to three, one-day, "in-house" trainings during the Contract period and assisting the RETAP Manager in developing the content.



5. Quality Assurance

- A. The goal for quality assurance is to recommend energy auditing and P2 techniques and methods on-site and in assessment reports that are based on established cost effective practices. The Contractor must implement a Quality Assurance Plan to evaluate the quality of the recommendations, to monitor the performance of the assessors, to continually improve the energy auditing and P2 techniques and methods recommended, and assure that the behavior of assessors on-site are appropriate and meeting RETAP and quality assurance goals. The Quality Assurance Plan will incorporate all tasks described in Article 1.022, subsection 5, given below.

6. Program Measurement and Reporting

- A. The Contractor is responsible for measuring program effectiveness, including methods of follow-up to assessed facilities. It is expected that the Contractor will use the current RETAP measurement forms or a facsimile for this purpose. Use of a facsimile measurement form must be approved by the DELEG, BES Project Manager. The goal is to measure program results to determine effectiveness in increasing energy efficiency and P2 awareness and implementation, reducing energy usage and waste generated, and achieving cost savings; and make improvements when needed. The methodology must obtain enough information to determine program effectiveness and potentially share energy efficiency and P2 technology information with other businesses, while respecting the confidentiality needs and the amount of time required of the businesses.
- B. The Contractor and the RETAP Manager must determine, on an ongoing basis, what information will be provided to meet program measurement needs. The RETAP Manager will evaluate the data received from the Contractor and work with them to continually make improvements. Measurement criteria will be explained so that review and interpretation of the data collected can be readily quantified.
- C. The Contractor is responsible for reporting electronically to the RETAP Manager, program measurement data on a monthly and Contract year basis; as described in Article 1.022, subsection 6, and Article 1.042 below.
- D. The Contractor is responsible for following up with the assessed businesses and institutions at regular intervals after the assessment report is sent (i.e. eight weeks, one year, and two years) for answering questions, providing additional information, pursuing case study opportunities, evaluating the assistance, and obtaining the information necessary for the monthly, and yearly reports. This includes assessments completed under the prior RETAP Contract.
- E. With the exception of the Contractor's invoice, all reports must be submitted electronically to the RETAP Manager in a format approved by the DELEG, BES Project Manager.

7. Marketing and Technology Transfer

- A. The Contractor has joint responsibility with the DELEG, BES for marketing the RETAP to increase awareness about the program, assure the minimum number of assessments is achieved, as specified in this RFP, and to direct the RETAP services based on the priorities established by the DELEG under Section 324.14511. The Contractor will assist the DELEG, BES in marketing the program.
- B. The Contractor is responsible for conducting technology transfer activities to share the results of on-site energy efficiency and P2 assessments to encourage facilities to reduce energy usage and waste, while respecting the confidentiality of assessed facilities as appropriate. The goal is to provide information on resources that assists and enables energy efficiency and P2 implementation, to further the program objectives of the RETAP.



Note: The Following Activities are Out of Scope

- A. RETAP Policies and Procedures
The DELEG, BES will manage and monitor the RETAP and be responsible for establishing policies and procedures for the RETAP services. The Contractor will carry out this project under the direction and control of the DELEG, BES Project Manager. Implementing policy or procedure changes for RETAP services without the approval of the DELEG, BES Project Manager is “out of scope.” Conducting activities that violate the policies and procedures established for the RETAP are strictly prohibited.
- B. Compliance Assistance
The RETAP services are non-regulatory. The RETAP does not provide assistance with environmental compliance and the on-site energy audits, energy assessments and/or P2 assessments are not environmental compliance audits, risk assessments, or environmental impact studies.
- C. Technical Services
The Contractor will subcontract with the RETAP professionals to conduct the on-site energy efficiency and P2 technical assistance. Providing technical assistance without using the RETAP professionals, partnering with other organizations, conducting specific RETAP projects without the approval of the DELEG, BES Project Manager, or utilizing the RETAP to solicit work for other organizations, businesses, or private consultants are strictly “out of scope.”
- D. Financial Assistance
The RETAP was established to provide on-site technical assistance to Michigan businesses and institutions. Providing grants or other direct financial assistance is “out of scope” for this Contract.

1.022 Work and Deliverable

The following is a preliminary analysis of the major tasks involved for developing the deliverables of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub-tasks or elements deemed necessary to achieve the deliverables, or to permit the development of alternative approaches or the application of proprietary analytical techniques for achieving the goals and objectives of RETAP technical services, pending final approval of the DELEG, BES Project Manager.

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

1. General

- A. The Contractor will develop and provide a detailed work plan to perform the daily operations and deliverables of RETAP technical services in accordance with the policies and procedures established for the RETAP by the DELEG, BES. The plan must include steps for identifying and proposing needed changes to current RETAP policies and procedures, and/or the development of new procedures where none currently exist. The Contractor must obtain prior written approval from the DELEG, BES Project Manager before implementing changes to existing RETAP policies and procedures, or implementing new procedures for RETAP technical services.
- B. The Contractor will subcontract with the RETAP professionals to conduct the on-site energy efficiency and P2 technical assistance. The Contractor will be responsible for management and payment of the retired professionals, and determining their rate of compensation. The RETAP assessors work on a part-time basis, receive reimbursement for travel expenses, and are paid at a nominal hourly rate set by the Contractor. Attachment C provides the contract rates of compensation for the RETAP professionals.
- C. The Contractor must demonstrate the ability to establish regular communication with the RETAP professionals.



- D. The Contractor must demonstrate that it has the infrastructure to respond to and process inquiries, including inquiries from the public and the RETAP Manager, during the business hours of 9:00 AM to 3:00 PM, Monday thru Friday.
- E. The Contractor must develop and implement appropriate procedures to maintain on-site technical assistance for businesses in a secure and, if necessary, confidential manner. These procedures must incorporate the quality assurance requirements given in Article 1.022, subsection 5F. The DELEG, BES reserves the right to obtain technical assistance documentation to address complaints brought to the attention of DELEG by a RETAP assessed business. Note: The Contractor must provide information essential for BES to meet its reporting obligations under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5.
- F. The Contractor must maintain a toll-free telephone number, a Michigan mailing address, and a non-descript email address.
- G. The Contractor will meet quarterly, at a minimum, with the RETAP Manager and DELEG, BES Project Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
- H. The Contractor must demonstrate that it has the infrastructure to report performance, measurement, and financial data and reports electronically in a format compatible with the DELEG, BES software requirements. The Contractor must be able to electronically submit and exchange technical assistance, financial data, reports, and other documents with the DELEG, BES. A Web and XML-based information system is currently in use to allow the RETAP contractor to electronically store and submit required information and data to the DELEG, BES. The Contractor will be required to install and use this information system (which requires an on-site PC based server system with power and data back-up and surge protection). Note: Recent programmatic changes and current ARRA reporting requirements have resulted in the need for system upgrades and enhancements of the web based system, which have not been completed. Therefore, the technical assistance data the financial data and all other reports and document must be submitted using an appropriate Microsoft Office Suite software product until these system upgrades and enhancements have been completed, or other unforeseen programmatic changes arise.

2. On-site Technical Assistance

- A. The Contractor will determine the rate of compensation for the RETAP professionals for conducting the on-site energy efficiency assessments, P2 assessments, energy audits, and performing the Technical Assistance Hours requests. Attachment C provides the contract rates of compensation for the RETAP professionals.
- B. The Contractor will perform a minimum of 22,500 Technical Assistance Hours to complete on-site energy assessments on a minimum of 400 buildings, on-site P2 assessments at a minimum of 50 facilities, and energy audits on a minimum of 25 buildings during the Contract period, including editing, finalizing, and delivering a written report for each assessment or energy audit.
- C. The Contractor will complete five or more of the on-site P2 assessments, and up to five of the energy audits at traditional agricultural businesses. The Contractor and the RETAP Manager will jointly approve the traditional agricultural business facilities/buildings to be assessed / audited prior to initiating the technical assistance. These P2 assessments and energy audits are to be conducted following completion of Training Task 4.B below.
- D. The Contractor will perform a minimum of 2500 Technical Assistance Hours to complete approximately 100 Technical Assistance Hours requests during the Contract period, to supplement the on-site assessments with assistance by the RETAP professionals for specialized assignments approved by the RETAP Manager.



- E. The Contractor will develop and submit for DELEG, BES Project Manager approval, separate procedures for conducting the on-site assessments and the Technical Assistance Hours requests. Attachment E provides the current procedures for conducting RETAP assessments.
- F. The procedures must further include a mechanism to periodically review and modify the protocols and report formats, as necessary, or recommended by the RETAP assessors, editors, the RETAP Manager, or DELEG, BES Project Manager. The Contractor must obtain the written approval of the DELEG, BES Project Manager prior to implementing any changes to the protocols for the on-site assessments, or Technical Assistance Hours requests. The protocols must be used.
- G. For the individual on-site assessments and energy audits, the Contractor will assemble a team of RETAP professionals based on experience and location relative to the facility to be assessed. The assessment team must inform eligible facilities about the Energy Efficiency Loan Program and the Small Business Pollution Prevention Loan Program, and applicable energy efficiency and P2 partnerships and initiatives.
- H. The Contractor must consider retaining lead RETAP assessor positions in several regions of the State.
- I. The Contractor will gather and provide research/background information to the RETAP team leader for each on-site assessment and energy audit.
- J. The Contractor will respond to facility requests for RETAP assistance within 72 hours and schedule on-site assessments / audits at the earliest date possible.
- K. The Contractor will be responsible for requesting management of the facility to be assessed or assisted to sign an indemnification agreement.. An example indemnification agreement is given in Attachment K. The Contractor can not perform the assessment or assistance if the facility management refuses to sign the agreement or wants to make changes to the agreement.
- L. The Contractor will be responsible for providing a written report to each assessed/audited facility within 45 - 60 days after the assessment/audit is completed. These reports will identify energy efficiency and P2 opportunities and contain specific recommendations to reduce energy usage and waste generation, save money, increase efficiency, reduce liability, and promote a positive public image (as appropriate). Where possible, each report will provide sufficient guidance for making business decisions to implement each recommendation based on a simple payback approach. These reports will additionally contain information on additional resources that are available to provide further guidance and implementation assistance, and may include a packet of DELEG, BES literature (provided by the RETAP manager). All reports will be printed double-sided on recycled paper and include an electronic copy of the report in the form of a compact disc.
- M. The Contractor will develop and submit an assessment report format and an energy audit report format for approval by the DELEG, BES Project Manager. The reports will contain an Executive Summary table listing the energy efficiency, P2 and cost saving opportunities along with the estimated savings and payback for each listed opportunity/recommendation (as appropriate). Attachment F provides the basic report outline and the Executive Summary table to be included in each assessment report. The report must be based on a working template of potential recommendations providing guidance on required information/data needed to be collected during the assessment/audit process for determining the anticipated energy and/or P2 impacts and associated cost savings for each recommendation (where possible). The working template must additionally include means for representing energy and water usage, waste generation, and associated cost data graphically and/or in table form.
- N. The Contractor will develop and submit for DELEG, BES Project Manager approval a report format to provide the requested information for the Technical Assistance Hours requests. The Contractor will develop and submit for DELEG, BES Project Manager approval a form to provide information detailing the termination of the assessment/audit process by a business or institution as described in Article 1.022, subsection 2B above.



- O. The Contractor must demonstrate the ability to maintain the assessment and Technical Assistance Hours files in a secure and, if necessary, confidential manner.
- P. The Contractor will maintain files of: (1) the skills, contact information, and performance of the RETAP professionals, (2) status of requests and status of on-site assessments/audits, and Technical Assistance Hours requests, and (3) reports or other deliverables resulting from assessments/audits, and Technical Assistance Hours requests. The Contractor will periodically provide the RETAP Manager updated information on the skills and contact information of the RETAP professionals.
- Q. The Contractor will periodically identify and recommend the purchase of hand-held instruments or other low cost equipment useful for identifying energy efficiency and P2 opportunities during on-site assessments/audits, and to maintain RETAP assessor safety during onsite assessments. The Contractor will take necessary steps to assure the RETAP assessors are properly trained to use these instruments / equipment.
- R. The Contractor will continually build a knowledge bank/database of energy efficiency and P2 recommendations as a resource for the on-site assessments/audits and for training purposes. The Contractor will periodically provide this information to the RETAP Manager for concurrence and quality control purposes if requested by the DELEG, BES Project Manager.
- S. The Contractor will provide an electronic copy of each completed assessment report, energy audit report, and Technical Assistance Hours request report to the RETAP Manager (within five days of the report being mailed to the client) to allow the BES to meet its reporting obligations under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5.

3. Recruitment

- A. The Contractor will recruit additional retired professionals to maintain a diverse pool of expertise to provide assistance in a variety of industrial sectors and geographical areas within Michigan. Current program recruitment needs are directed to securing retired engineers in northern Michigan, in addition to securing retired professionals retaining their professional engineering license or energy management and/or energy auditing certifications. The Contractor must conduct the recruitment efforts with input from the RETAP Manager. The Contractor and the DELEG, BES Project Manager must jointly determine the necessity for recruitment. The Contractor will interview and select candidates in cooperation with the RETAP Manager, who will also participate on the interview team. Recruitment must comply with State of Michigan hiring guidelines for nondiscrimination.
- B. The Contractor must publicize position availability.
- C. The Contractor will develop suggested interview questions and selection criteria for approval by the DELEG, BES Project Manager.
- D. The Contractor and the DELEG, BES Project Manager will jointly determine the need to develop a questionnaire and hypothetical energy efficiency and P2 problems requiring a written response to assess the problem-solving and writing skills of the candidates.
- E. The Contractor will provide new assessors with orientation material (to include general and specific P2 and energy efficiency information). A one-day orientation session is consistent with past RETAP practices for new assessors located in the lower Michigan peninsula. The Contractor will provide copies of the orientation materials to the RETAP Manager on request.
- F. The Contractor will develop a contractual arrangement with the assessors. The agreement must include an explicit statement that the RETAP assessor must not offer their personal services to the RETAP customers.
- G. The Contractor will provide business cards and a permanent RETAP name tag for the assessors.
- H. The Contractor will develop an electronic database with individual profiles of the qualifications and contact information of the RETAP assessors, and periodically providing the RETAP Manager



with an updated version of the database for recruitment and quality assurance purposes. The database must be compatible with the DELEG, BES software requirements, currently Microsoft Office Suite 2003 software or more recent versions.

- I. The Contractor will include details for recruiting additional retired professional (as specified above) in the work plan required under Article 1.041

4. Training

- A. The Contractor is responsible for assessing the skill levels and identifying the training needs of the RETAP professionals in consultation with the DELEG, BES Project Manager. Current program training needs are directed to securing energy management and/or energy auditing certifications by individual RETAP professionals with the appropriate background and skill levels.
- B. The Contractor will determine the training needs for developing the ability within a limited pool of RETAP engineers (having the appropriate background and skill level) for performing in-depth, on-site P2 assessments and energy audits at traditional agricultural businesses (e.g. dairy farms, grain elevators, greenhouses, etc.). On approval of the DELEG, BES Project Manager, the Contractor will pay/reimburse the limited pool of RETAP engineers for attending the P2 and/or energy auditing training courses or workshops specific to traditional agricultural businesses. The Contractor will provide a written summary report and a copy of materials obtained to the RETAP Manager for each course or workshop attended by these RETAP engineers. This report will describe the lessons learned or other information obtained relevant to RETAP technical services and how these lessons will be disseminated among the RETAP professionals.
- C. The Contractor is responsible for developing the content and providing the instruction for up to three, one-day "in-house" trainings of the RETAP professionals, for the contract period. The Contractor must obtain the approval of the DELEG, BES Project Manager for the content of these trainings. The DELEG, BES Project Manager may require one or more of these trainings to be directed to achieving the technical assistance objectives of the DELEG, BES programs/projects. All activities and associated costs necessary for conducting these trainings are the responsibility of the Contractor.
- D. The Contractor must also pay and reimburse individual RETAP professionals for attending energy efficiency / energy audit certification courses or workshops offered by other organizations as approved by the DELEG, BES Project Manager. The Contractor will provide a written summary report and a copy of materials obtained to the RETAP Manager for each course or workshop attended by a RETAP professional. This report will describe the lessons learned or other information obtained relevant to RETAP technical services. If appropriate and feasible, these lessons will be disseminated among the RETAP professionals.
- E. The Contractor will develop and submit for the DELEG, BES Project Manager's approval, abbreviated procedures for experienced assessors to properly mentor new assessors during their first several on-site assessments.

5. Quality Assurance

- A. The Contractor will implement a Quality Assurance Plan to evaluate the quality of the recommendations, to monitor the performance of the assessors, to continually improve the energy auditing and P2 techniques and methods recommended, and assure that the behavior of assessors on-site are appropriate and meeting RETAP and quality assurance goals. The Contractor will submit the quality assurance plan, for approval by the DELEG, BES Project Manager, prior to implementing the plan. The Contractor must obtain the written approval of the DELEG, BES Project Manager prior to implementing any changes to the quality assurance plan.
- B. The Contractor will review and modify the assessment protocol and report format as necessary or recommended by the DELEG, BES Project Manager. When a modification is proposed, submittal to the RETAP Manager for approval is necessary.
- C. The Contractor will review with the RETAP Manager the mechanism for tracking and reporting the status of requests, pre-assessments, on-site assessments/audits, Technical Assistance Hours



requests, reports/deliverables, and follow-up contacts, including a general timeline for the process.

- D. The Contractor will develop and submit for DELEG, BES Project Manager approval, abbreviated procedures for addressing any occurrence of conflict of interest by assessors. The procedure will include notifying the RETAP Manager of such occurrences.
- E. The Contractor will jointly determine with the DELEG, BES Project Manager the need to develop a mechanism for reviewing the performance of the RETAP professionals and maintain a record of this information on file for review by the DELEG, BES Project Manager.
- F. The Contractor will make appropriate arrangements to allow the RETAP Manager to attend one on-site assessment/audit per calendar quarter. Both the Contractor and the DELEG, BES Project Manager must agree to the on-site assessment for this purpose. The appropriate manager of the facility for this on-site assessment must provide prior written approval allowing for the attendance of the RETAP Manager during the on-site assessment/audit.

6. Program Measurement and Reporting

- A. The Contractor must provide program and financial information essential for the DELEG, BES to meet its reporting obligations under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5.
- B. The DELEG, BES Project Manager will determine, on an ongoing basis, what information will be collected and provided to meet program measurement needs. The RETAP Manager will evaluate the data received from the Contractor and work with them to continually make improvements.
- C. The Contractor will use the current RETAP measurement forms or a facsimile for the Program Measurement task. Attachment G provides the current forms for reporting the program measurement data to the RETAP Manager.
- D. All reports, except for the Contractor's invoice, must be submitted electronically to the DELEG, BES using Microsoft Office Suite 2003 software or more recent versions of Word and/or Excel. Future changes in electronic report submittal requirements will be directed by the RETAP Manager or DELEG, BES Project Manager (see Section 1.022, subsection 1.H).
- E. The Contractor will electronically submit monthly summaries of progress using Microsoft Office Suite 2003 or more recent versions (see also Section 1.022, subsection 1.H). The monthly summaries will outline the work accomplished during the reporting period, including problems, real or anticipated, which should be brought to the attention of the DELEG, BES Project Manager; and notification of any significant deviation from previously agreed-upon work plans. The DELEG, BES Project Manager will determine what information must be reported.
- F. At a minimum, the Contractor will provide to the RETAP Manager, on a monthly basis, the following information:
 - 1. Overall information on the on-site technical assistance and other contractual tasks.
 - a. Numbers of assessment, energy audit, and Technical Assistance Hours(TAH) requests;
 - b. Numbers of pre-assessments;
 - c. Numbers of on-site assessments, on-site energy audits, and on-site TAH visits;
 - d. Numbers of assessment, energy audit, and TAH reports mailed;
 - e. Numbers of follow-up contacts made;
 - f. Narrative account of progress on all tasks.
 - 2. Information on individual assessments, energy audits, and TAH requests.
 - a. Identifier number for the facility;
 - b. Facility name and address;
 - c. Contact information for the facility, person making request, and assessment contact;
 - d. Industry types and NAICS codes;
 - e. Number of full-time employees;



- f. Date of request;
 - g. Date of pre-assessment;
 - h. Date of on-site assessment/audit/TAH;
 - i. Date report was mailed;
 - j. Dates of follow-up contacts;
 - k. Measure of recommendations implemented, i.e., partially, substantially, and fully;
 - l. Estimates or actual measurements of the quantities of wastes reduced, energy saved, and costs saved as a result of implementing the recommendations;
 - m. Yes/no indication of whether the facility is willing to submit required information for publishing a P2 case study on the recommendation(s) implemented, with reference to the recommendation(s) at issue;
 - n. Assessors serving on Assessment Team;
 - o. Assessments/Audits/TAH requests cancelled and reasons why; and
 - p. Unsuccessful follow-ups and reasons why.
- G. The Contractor will provide to the RETAP Manager by the 15th of each month an invoice report with the supporting financial data using the current RETAP accounting forms and Contract ledger or a facsimile for this purpose. Attachment H provides the current forms for reporting the program financial data to the RETAP Manager. This data includes: a summary of monthly expenses, detail of expenses incurred by subcontractors, and a record of invoices and payments to subcontractors for services. The DELEG, BES Project Manager will inform the Contractor what information must be reported for the DELEG, BES to meet its reporting obligations under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5.
- H. The Contractor will follow-up with the assessed businesses and institutions at regular intervals after the assessment report is sent (i.e.: eight weeks, one year, and two years) for answering questions, providing additional information, pursuing case study opportunities, evaluating the assistance, and obtaining the information necessary for the monthly and Contract Year reports. The Contractor will additionally continue and complete these follow-ups with those facilities that received an on-site assessment from the RETAP under the prior contract.
- I. The Contractor will report quantitative and qualitative program measures, as described above, and in Article 1.042 below. The DELEG, BES Project Manager will determine what information must be reported.
- J. The Contractor will report in-depth measurement data on the raw material, critical/hazardous material elimination, waste reduction, energy, labor, cost, and all other savings achieved by ten to twenty of the facilities previously receiving an on-site assessment/audit. The Contractor and the DELEG, BES Project Manager must jointly agree upon the facilities to report the in-depth measurement data. The Contractor will develop and submit for the RETAP Manager's approval, the data elements necessary for reporting the in-depth measurement data. The DELEG, BES Project Manager will determine, on an ongoing basis, what in-depth measurement data will be provided to meet program measurement needs. The Contractor will report the in-depth measurement data for the one year, and two year follow-up reports for these facilities. The Contractor will identify the facilities, obtain the necessary approvals, and conduct the necessary activities to collect and report the in-depth measurement data. The in-depth measurement follow-up will be conducted by a team of two or more RETAP engineers, one of which must be the original assessment team leader (if available) and at least one RETAP engineer with the experience and capability of successfully estimating energy, waste, and cost savings associated with implemented RETAP recommendations. The Contractor is encouraged to employ this specialized RETAP engineer(s) on multiple in-depth measurement follow-ups.

7. Marketing and Technology Transfer

- A. The Contractor will develop a marketing (and technology transfer) plan to achieve the goals given in Article 1.021, subsection 7 above, submitting the plan for approval by the DELEG, BES Project Manager, and implementing the approved marketing (and technology transfer) plan. The procedures must include a mechanism to periodically review and modify the marketing (and technology transfer) plan, as necessary, or recommended by DELEG, BES Project Manager. The Contractor must obtain the written approval of the DELEG, BES Project Manager prior to implementing any changes to the marketing (and technology transfer) plan.



- B. The Contractor will research and continually build a library of energy efficiency, P2 information and process information and recommendations as a resource for on-site assessments/audits and providing this information to the RETAP Manager for concurrence. The information collected should focus on cost effective technologies, systems, equipment, and practices for reducing on-site energy and water usage, waste generation/disposal, and other cost savings measures. Particular emphasis should be given to methods and techniques for estimating on-site energy, water, and material usages, and waste generation rates, and methods for estimating anticipated on-site energy, water, material, waste, and cost reduction benefits and paybacks associated with assessment/audit recommendations.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Contractor must provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in this Contract. The DELEG, BES reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project.

The on-site technical assistance will be conducted by the retired engineers, scientists, and other qualified professionals that constitute the RETAP. The Contractor will subcontract with these individuals and recruit additional retired professionals to maintain a diverse pool of expertise to provide assistance in a variety of industrial sectors, geographical areas within Michigan, building or process systems, and media of waste.

1.040 Project Plan

1.041 Project Plan Management

The work must be carried out to the satisfaction of the DELEG, BES Project Manager. All written materials and major work elements must be provided to the RETAP Manager for review, prior to finalizing and be acceptable to the DELEG, BES Project Manager. The work performed must be completed by staff acceptable to the DELEG, BES Project Manager.

- A. The Contractor will carry out this project under the overall direction and control of the DELEG, BES Project Manager. The RETAP Manager will review progress reports.
- B. Although there will be continuous liaison with the Contractor, the RETAP Manager must have contact at a minimum of weekly with the Contractor for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise. The objective of this step is to ensure that the RETAP Manager is promptly informed of progress and the major issues that confront the Contractor throughout the Contract. The contact will be a mutually agreed upon manner.
- C. Conferences, meetings, or conference calls may be held by the DELEG, BES Project Manager or the RETAP Manager to review progress and re-chart direction. These engagements will be attended by the DELEG and the Contractor Project Director. Key Contractor team members may also be requested to attend. The Contractor will receive appropriate advanced notice from the RETAP Manager prior to each engagement.
- D. Within ten working days of the award of the Contract, the Contractor will submit a work plan to the DELEG, BES Project Manager for final approval. This final implementation plan must be in agreement with the work plan proposed by the Bidder and accepted by the State of Michigan for Contract, and must include the following:
 - 1. The Contractor's project organizational structure.
 - 2. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - 3. Methods, tools and processes proposed to oversee the project, address issues/changes as they may arise, and keep the appropriate parties apprised of progress.



4. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
5. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

1.042 Reports

All reports and other documents must be submitted electronically in a format compatible with the DELEG, BES software using an appropriate Microsoft Office Suite software product (see also Section 1.022 subsection 1.H).

The Contractor will provide to the RETAP Manager by the 15th of each month an invoice report with the supporting financial data using the current RETAP accounting forms and contract ledger or facsimile for this purpose. Attachment H provides the current RETAP accounting forms and contract ledger.

The Contractor will provide the monthly progress and in-depth measurement data reports as outlined in Article 1.022, subsection 6. Note: The monthly invoice report and the monthly progress reports must provide information essential for BES to meet its reporting obligations under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5.

Two hard copies and an electronic copy of each contract year's annual report will be submitted to the DELEG, BES Project Manager within 30 days of the conclusion of each contract year. These reports must be submitted in draft form to the DELEG, BES Project Manager at least four weeks prior to the due date. The DELEG, BES Project Manager must approve the reports. At a minimum, the annual reports must contain the following:

- A. A financial report reconciling expenditures to budget line items;
- B. A summary of project achievements/outcomes and overall impacts, milestones reached, and obstacles experienced during the year;
- C. Final work products, not submitted previously;
- D. Information described in the task for program measurement in Article 1.022, subsection 6; and
- E. Narrative report of progress on each task outlined in Article 1.022, including a graphic display and percent (%) completion of the tasks.

1.050 Acceptance

1.051 Criteria

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

The work must be carried out to the satisfaction of DELEG, BES Project Manager. All written documentation and major work elements must be provided for the RETAP Manager to review prior to finalizing, and be acceptable to the DELEG, BES Project Manager.

All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation and fulfillment of data and document deliverables, and as to the satisfactory and acceptable fulfillment of the terms of this agreement must be decided by the DELEG, BES Project Manager.

- A. Document Deliverables
Documents include, but not limited to, monthly and yearly reports, financial reports, assessment/audit reports, and any documents resulting from or required of Technical Assistance Hours requests.
 1. Documents are dated and in electronic format, compatible with the DELEG, BES software, currently Microsoft Office Suite 2003 (see also Section 1.022 subsection 1.H) in accordance with Article 1.042;
 2. The documents will be reviewed and accepted in accordance with the requirements of this Contract; and



3. The RETAP Manager will review project documents within 30 days of receipt. Approvals will be written and signed by the DELEG, BES Project Manager or designee. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived by the DELEG, BES Project Manager, the Contractor will resubmit documents for approval by the DELEG, BES Project Manager or designee within 30 days of receipt.

B. Service Deliverables

Services include, but not limited to, on-site energy efficiency assessments, on-site P2 assessments, energy audits, Technical Assistance Hours requests, and recruitment, training, quality assurance, program measurement, marketing, and technology transfer activities outlined in Article 1.022.

1. The services have been completed in accordance with the procedures developed for RETAP services;
2. The services will be accepted in accordance with the requirements of this Contract; and
3. Issues and disagreements over the delivery and acceptance of RETAP services provided by the Contractor will be brought to the attention of the DELEG, BES Project Manager and resolved in a timely and mutually agreeable manner.

C. Data Deliverables

Data deliverables include, but not limited to, information/data on the RETAP services, requested by the RETAP Manager, but not otherwise included in the document or service deliverables supplied by the Contractor.

1. Data deliverables are compatible with the DELEG, BES software, currently in Microsoft Office Suite 2003 (see also Section 1.022 subsection 1.H) in accordance with Article 1.042;
2. The data deliverables will be reviewed and accepted in accordance with the requirements of this Contract; and
3. The RETAP Manager will review the data deliverables within ten days of receipt. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived by the DELEG, BES Project Manager, the Contractor will resubmit the data deliverable for approval by the DELEG, BES Project Manager or designee within ten days of receipt.

1.052 Final Acceptance

Final acceptance will occur upon successful completion of the final Contract year's reporting requirements. Any intermediate acceptance of sub-deliverables does not complete the requirement of Final Acceptance.

The following criteria will be used by the DELEG, BES Project Manager to determine Final Acceptance under this SOW:

- A. All tasks listed under Article 1.022 are completed;
- B. All documents, services, and data are delivered and accepted by the DELEG, BES Project Manager in accordance with the requirements of this Contract; and
- C. All bills related to this Contract have been submitted and approved for payment.

1.060 Contract Pricing

1.061 Contract Pricing

See Attachment A, Pricing.

Attachment A details line item prices for the tasks listed in Section 1.022, and a unit price for a Technical Assistance Hour. This unit price includes costs for all related tasks associated with providing the on-site technical assistance. Travel expenses will be reimbursed at the prevailing State of Michigan travel rates. The mileage reimbursement rate will be limited to the Standard Mileage Rate set by the DTMB (see http://michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html).



The Contractor can anticipate a total of 22,500 Technical Assistance Hours to complete on-site energy efficiency assessments on a minimum of 400 buildings, on-site P2 assessments at a minimum of 50 facilities, and energy audits on a minimum of 25 buildings during the Contract period. The Contractor can anticipate an additional 2,500 Technical Assistance Hours to complete approximately 100 Technical Assistance Hours requests beyond the on-site assessments and energy audits.

The assessment/audit (including the pre-visit) may take one to two days of on-site time. For large institutions, the full on-site assessment may last about three days. For a smaller business, the pre-assessment may yield enough information to support a report of energy efficiency and/or P2 opportunities.

For the purpose of estimating costs of an on-site energy efficiency assessment and report, an average of 40 sub-contractor hours can be expected. For the purpose of estimating costs of an on-site pollution prevention assessment and report, an average of 80 sub-contractor hours can be expected. For the purpose of estimating costs of an on-site energy audit and report, an average of 100 sub-contractor hours can be expected.

Any assessments/audits and Technical Assistance Hours requests conducted beyond the contractually obligated amounts will be compensated at a rate as identified in the payment schedule. Payment for these “additional” assessments will be determined from available State funding at the time of the completion of the work. It is suggested that a determination of funding availability be requested before undertaking any additional assessments.

The Technical Assistance Hours will be compensated on a unit price basis, with the unit price representing the average hourly cost for all costs associated with completing all on-site technical assistance and delivering the associated reports based on maximum of 25,000 assessor hours. This includes all staffing, subcontractor, travel, supplies and materials, and direct and overhead costs.

The Technical Assistance Hours and the recruitment, training, quality assurance, program measurement and reporting, and technology transfer and marketing tasks will be reimbursed on per hour basis as given in the budget of the signed contract.

Overhead costs will be limited to a set percentage of the total cost for staff and subcontractor salaries/wages.

All invoices should reflect actual work done. As a minimum, requests for on-site assistance will be assigned an identifier number that will be used throughout the assessment and measurement reporting process for each facility/request. The identifier number will be used on invoices to document actual hours against a specific assessment/audit or Technical Assistance Hours request and will be used to document status of completion of each. Specific details of invoices and payments will be agreed upon between the DELEG, BES Project Manager and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the DTMB, Director of Purchasing Operations. This activity will occur only upon the specific written direction from Purchasing Operations.

The DELEG, BES Project Manager will accept for payment, only invoices that are error free as of the invoice date. Any invoicing errors or omissions that are the fault of the Contractor will result in the DELEG rejecting such invoices, requiring that the Contractor correct the invoice problems and then create a new invoice, with a new invoice date reflecting that the invoice is being reissued after the corrections have taken place. Contractors demonstrating a continuing problem with invoicing errors and omissions may be considered in default of Contract; resulting in termination of the Contract.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

The State of Michigan does not pay for Contractor's time spent on meal breaks (e.g. breakfast, lunch, and dinner).

In the situation where a business or institution terminates RETAP services prior to completion of the on-site assessment/audit, the Contractor must use Technical Assistance Hours for compensation of work



completed. The Contractor will include with the monthly invoice to the DELEG, BES Project Manager information detailing the termination of the assessment process by the business or institution.

1.062 Price Term

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

1.063 Tax Excluded from Price

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

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

1.064 Holdback

The State has the right to hold back, as a retainage, an amount equal to five percent (5%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back must be released to Contractor after the State has granted Final Acceptance.

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP

- A. All questions which may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation of designs and specifications, and as to the satisfactory and acceptable fulfillment of the terms of this agreement must be decided by the DELEG, BES Project Manager.
- B. The Contractor must agree that it will not volunteer, offer or sell its services to any litigant against the DELEG with respect to any services that it has agreed to perform for the DELEG, BES, provided that this provision must not apply either when the Contractor is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the Contractor to be in violation of any Michigan or Federal law.
- C. All documents and other materials prepared by the Contractor during the execution of a Contract must be the property of the DELEG. This includes, but is not limited to, all new business processes created, all planning and design work performed, the source and object code of all software programs and systems, any business objects or databases created, all related documentation (written or automated), and reports. The State must own and retain intellectual property rights covering technology developed as part of the services, described in the RFP.
- D. The Contractor must agree that they will not furnish or disclose any items owned by the DELEG to a third party without the written permission of the DELEG, BES Project Manager; this includes both items created as part of this Contract and items owned by the DELEG that are incidental to the Contract. The Contractor must also agree not to use items owned by the DELEG for other purposes without the prior written permission by the DELEG, BES Project Manager.
- E. Individuals assigned by the Contractor are employees of that Contractor, and are not, under any circumstances or conditions, employees of the DELEG.
- F. The DELEG will retain the right to release outright or request the replacement of any Contractor representative who is working at an inferior level of performance, as determined by the DELEG, BES Project Manager. The Contractor will be given 24 hours advance notice of this action. The Contractor must provide an acceptable replacement within five working days of notice of this release.



- G. The Contractor will assume full responsibility for the behavior of its employees and will remove any of its employees from the State premises at the request of the DELEG, BES Project Manager.

- H. The individual(s) assigned to the project may not be replaced during the course of the project without the prior approval of the DELEG, BES Project Manager. The DELEG, BES Project Manager and/or his representatives may interview candidates prior to this approval.

- I. The Contractor must use all DELEG software, in accordance with applicable license agreements and any further restrictions imposed by the DELEG. Contractors must not make any unauthorized copies of any DELEG licensed software under any circumstances. Contractors found copying or knowingly using copyrighted software, other than for backup purposes, are subject to removal. Contractors must not provide software to any outsiders including consultants, local governmental units and others when this would be in violation of law or copyright or license agreements.

- J. The Contractor will certify in writing that they are in conformance with applicable federal and State civil rights laws and practices, equal employment opportunity for all persons regardless of race, creed, color, religion, national origin, gender or handicap; it is also in conformance with the requirements of the Americans with Disabilities Act. Failure to comply with the aforementioned laws may result in the termination of the Contract.

- K. The Contractor's name, logo, or other company identifier may not appear on documentation delivered to the State without written authorization from the DELEG, BES Project Manager. An exception to this will be transmittal of cover letters showing delivery of said documents.

- L. The DELEG, BES Project Manager reserves the right to interview and approve the Contractor's personnel. The DELEG, BES Project Manager reserves the right to reject any proposed staff member and require the appointment of a satisfactory Contractor staff member, as well as to require verification of a proposed staff member's skills through demonstration and/or testing.

- M. The Contractor will not be limited to the tasks identified in this document or work plan, and may supplement them with an alternate list of tasks or sub-tasks that will still permit the proper development of the project. Any additions or modifications of the tasks by the Contractor must be so noted, along with reasons the changes were necessary. Changes and modifications are subject to written approval by the DELEG, BES Project Manager or designated representative.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 1.5 years beginning 08/18/2010 through 02/17/2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

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

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

2.007 Headings

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



2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Technology Management and Budget, Purchasing Operations and Department of Energy, Labor & Economic Growth (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contract Administrator within Purchasing Operations for the Contract is:

Mary Ostrowski
 Purchasing Operations
 Department of Technology Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
ostrowskim@michigan.gov
 (517) 373-6327

2.022 Contract Compliance Inspector

After DTMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with (Department of Energy, Labor and Economic Growth), will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Purchasing Operations.** The CCI for the Contract is:

David Herb, RETAP Manager
 Department of Energy, Labor and Economic Growth
 Bureau of Energy Systems
 611 W. Ottawa
 Lansing, MI 48933-1070
 Email: herbd@michigan.gov
 Phone: (517) 241-8176
 Fax: (517) 373-6734



2.023 DELEG, BES Project Manager

The following individual will oversee the project:

Robert Jackson, Project Manager
Department of Energy, Labor and Economic Growth
Bureau of Energy Systems
611 W. Ottawa
Lansing, MI 48933-1070
Email: jacksonr1@michigan.gov
Phone: (517) 373-2731
Fax: (517) 373-6734

2.024 Change Requests

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

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

Change Requests:

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

2.025 Notices

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

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee,



agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

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

2.029 Assignments

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

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

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

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position



(whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 Freedom of Information

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

2.037 Disaster Recovery

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

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

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

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

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

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

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



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

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

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

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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



2.062 Contractor Key Personnel

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

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

**2.066 Cooperation with Third Parties**

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

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

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

2.072 State Consent to Delegation

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

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of



Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

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

2.082 Facilities

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

2.090 Security

2.091 Background Checks

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

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

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.



2.093 PCI Data Security Requirements – Deleted, Not Applicable

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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

2.103 Exclusions

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

2.104 No Implied Rights

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

2.105 Respective Obligations

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



2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

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

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must 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) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice 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 must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.



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

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

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

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

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

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

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

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 Equipment Warranty – Deleted/Not Applicable

2.126 Equipment to be New

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.



2.127 Prohibited Products

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

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the 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 under the Contract.

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

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

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

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

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

- 1. Commercial General Liability with the following minimum coverage:
 - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

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

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



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

3. Workers' compensation coverage must be provided according to 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 must 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 \$1,000,000.00 with a maximum deductible of \$50,000.00.

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must 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: \$1,000,000.00 each occurrence and \$1,000,000.00 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 the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must 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 must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "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) must contain a provision indicating that coverages afforded under the policies



MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State 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.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

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



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

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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



2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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



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

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

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

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

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

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

**2.158 Reservation of Rights**

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

2.160 Termination by Contractor**2.161 Termination by Contractor**

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

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

2.170 Transition Responsibilities**2.171 Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed (180) days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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



2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

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

2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

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



2.192 Informal Dispute Resolution

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

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

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National



Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Energy, Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor must include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of the Contract in privity of contract with the Contractor must keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Energy, Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal



injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

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

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

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

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

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

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



2.232 Call Center Disclosure – Deleted/Not Applicable

2.233 Bankruptcy

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

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

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

2.240 Performance

2.241 Time of Performance

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

2.242 Service Level Agreements (SLAs) – Deleted/Not Applicable

2.243 Liquidated Damages – Deleted/Not Applicable

2.244 Excusable Failure

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

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



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

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.

(b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

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

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the



quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

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

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

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

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

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

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

**2.255 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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

2.257 Process for Approval of Physical Deliverables

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

2.258 Final Acceptance

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

2.260 Ownership**2.261 Ownership of Work Product by State**

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

**2.262 Vesting of Rights**

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

2.263 Rights in Data

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

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

2.264 Ownership of Materials

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

2.270 State Standards**2.271 Existing Technology Standards**

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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



2.280 Extended Purchasing

2.281 MIDEAL

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

The Contractor must supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to, and pay the local unit of government, on a direct and individual basis.

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

2.282 State Employee Purchases

The State allows State employees to purchase from the Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.

The Contractor must supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to and pay the State employee on a direct and individual basis.

To the extent that authorized State employees purchase quantities of Services or Deliverables under the Contract, the quantities of Services and/or Deliverables purchased must be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

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

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

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer



of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

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

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

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

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

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

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



Article 3 - ARRA Terms

SOLICITATION & AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5

3.000 ARRA Definitions

Definitions:

Recovery Act means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

3.001 Sub-Recipients Requirements

Contractor must include these terms, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the Recovery Act.

3.010 Reporting & Registration Requirements (Section 1512)

On July 1, October 1, January 1, and March 1, the Contractor must provide the CCI with information required to be reported under Section 1512 of the Recovery Act and any other information reasonable requested by the CCI. Contractor must report this information in the form and manner required by the CCI. The reporting requirement is a material obligation of the Contract. Contractor's failure to comply may be a material basis for termination under Section 2.150, Termination by the State.

3.020 Buy American Requirement (Section 1605)

Definitions as used in this section:

Designated Country means:

(1) For procurements by the State of Michigan:

(a) a World Trade Organization Government Procurement Agreement country: Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom; or

(b) a Free Trade Agreement (FTA) country: Australia, Chile, and Singapore.

(2) For procurements by the City of Detroit:

(a) a United States-European Communities Exchange of Letters country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom

Designated Country Good is iron, Steel, or a Manufactured Good (other than construction-grade steel, motor vehicles, and coal) that:

(1) is wholly the growth, product or manufacture of a Designated Country; or

(2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in a Designated Country into a new and different Manufactured Good distinct from the materials from which it was transformed.



Domestic Good is iron, Steel, or a Manufactured Good that:

- (1) is wholly the growth, product or manufacture of the United States; or
- (2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different Manufactured Good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in Manufactured Goods or products, as long as the manufacture of goods occurs in the United States.

Federal Agency means the department or agency of the federal government that awarded funds to the State of Michigan from the RECOVERY ACT which finances the project described in this RFP.

Foreign Good is iron, Steel, or a Manufactured Good that is not a Domestic or Designated Country Good.

Manufactured Good means a good brought to the construction site for incorporation into the building or work that has been--

- (1) processed into a specific form and shape; or
- (2) combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public Building and Public Work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

I. Required use of Domestic Goods

a. Under section 1605 of the Recovery Act, only Domestic Goods will be used in the construction, alteration, maintenance, or repair of a Public Building or Public Work, unless an exception applies. This requirement does not apply to the Domestic Goods listed:

None

b. A Bidder requesting a determination regarding the inapplicability of section 1605 of the Recovery Act must submit the request to the Federal Agency with adequate time to allow a determination before the proposal due date. A Bidder must provide a copy of this request to the DTMB Buyer. The Federal Agency is the sole entity authorized to make determinations regarding the inapplicability of section 1605 of the Recovery Act.

c. The Federal Agency may except other iron, Steel, or Manufactured Goods (other than construction-grade steel, motor vehicles, and coal) if it determines that:

- (1) the cost of Domestic Goods would be unreasonable. The cost of Domestic Goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;



(2) the iron, Steel, or Manufactured Good (other than construction-grade steel, motor vehicles, and coal) is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) the application of section 1605 of the Recovery Act would be inconsistent with the public interest.

d. Regardless of any determination request, any Bidder that requests to use non-Domestic Goods must include in its proposal:

- (1) a description of the iron, Steel, or Manufactured Goods;
- (2) unit of measure;
- (3) quantity;
- (4) cost;
- (5) time of delivery or availability;
- (6) location of the construction project;
- (7) name and address of the proposed supplier; and
- (8) a detailed justification of the reason for use of non-Domestic Goods.

e. If the Bidder's proposal includes the use of non-Domestic Goods, the Bidder may submit an alternate proposal based on the use of equivalent Domestic Goods. If an alternate proposal is submitted, the Bidder must submit a separate cost comparison table similar to the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.

f. A request based on the unreasonable cost of a Domestic Good must include a survey of suppliers and a completed cost comparison table listed below for each item. The Bidder must list the name, address, telephone number, e-mail address, and contact person for each supplier surveyed. The Bidder must also attach a copy of each supplier's response; if the response is oral, the Bidder must attach a summary. The Bidder may include other supporting information.

DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON

Description of Goods	Unit of measure	Quantity	Cost (dollars)*
Item 1: Domestic Goods.....			
non-Domestic Goods.....			
Item 2: Domestic Goods.....			
non-Domestic Goods.....			

**Include all delivery costs to the construction site.*

g. If the Federal Agency denies an exception requested under section 1605 of the Recovery Act, the State will evaluate only the Bidder's proposal based on the use of Domestic Goods.

h. Any request under subsection (b) submitted after the contract award must explain why the Bidder could not reasonably foresee the need for such determination and could not have requested the determination before the contract was awarded. If the Bidder does not submit a satisfactory explanation, the Federal Agency does not need to make a determination.

i. If the Federal Agency determines after the contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies, and the agency and the Bidder negotiate adequate consideration, the agency will modify the contract to allow



use of the non-Domestic Goods. However, when the basis for the exception is the unreasonable cost of a Domestic Good, adequate consideration must not be less than the differential established in the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.

j. Section 1605 of the Recovery Act does not apply to equipment or tools which are not incorporated into the building or work.

3.030 Prevailing Wages

Under section 1606 of the Recovery Act, wages paid to all laborers and mechanics employed by the Contractor and each subcontractor on projects funded in whole or in part with funds available under the Recovery Act must not be less than prevailing wages on projects of a similar character in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Michigan is available at <http://www.gpo.gov/davisbacon/mi.html>. This provision supersedes section 2.204, Wage Rate Requirements.

Applicants must also be aware of additional information on Davis Bacon requirements at: http://www.michigan.gov/documents/dleg/DBA_Clauses_Approved_by_DOL_11.06.2009_303578_7.pdf

3.040 Inspection & Audit of Records

In addition to the requirements of Article 2:

- a. Contractor must permit both the United States Comptroller General or its representative and the United States Inspector General or its representative to:
 - (1) examine any records that directly pertain to, or involve transactions relating to, this contract; and
 - (2) interview any officer or employee of the Contractor or any of its subcontractors, regarding the activities funded with funds appropriated or otherwise made available by the RECOVERY ACT.
- b. This provision must be included in all subcontracts.
- c. Failure to comply with subsection (a) or (b) is considered a material breach and may result in the termination of the Contract.

3.050 Whistle Blower Protection for Recipients of Funds

Contractor must post notice of an employee's rights and remedies for whistleblower protections under section 1553 of the Recovery Act. Contractor must include this section in all subcontracts.

3.060 Funding of Programs

Under 2009 PA 7, Section 209, this Contract is supported with temporary federal funds made available by the Recovery Act. The programs supported with the temporary federal funds will not be continued with state financed appropriations once the temporary federal funds are expended.



3.070 Fixed Price- Competitively Bid

Contractor must, to the maximum extent possible, award subcontracts as fixed-price contracts through competitive bid procedures.

3.080 Segregation of Costs

Contractor must segregate **obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the Recovery Act.**

3.090 Publication

Contractor must identify projects supported by the Recovery Act by including the appropriate emblems as the State may require.

3.100 Buy Michigan Preference

For contracts and subcontracts using Recovery Act funds, Contractor must give a preference to products manufactured or services offered by Michigan-based firms if all other things are equal and if not inconsistent with federal statute.

3.110 Non- Discrimination

In addition to the requirements of Article 2, Contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

3.120 Prohibition on Use of Funds

Funds paid to the Contractor must not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

3.130 False Claims Act

Contractor must promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. 3729, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving the Recovery Act.

3.140 Job Opportunity Posting Requirements

Contractor must post notice of job opportunities funded by this Contract in the Michigan Talent Bank, www.michworks.org/mtb.



Attachment A, Pricing

Costs are based on the completion of 22,500 Technical Assistance Hours to complete on-site energy efficiency assessments on a minimum of 400 buildings, on-site P2 assessments at a minimum of 50 facilities, and energy audits on a minimum of 25 buildings, and a total of 2500 Technical Assistance Hours to complete approximately 100 Technical Assistance Hours requests during the Contract period. Note: 25,000 Technical Assistance Hours total.

For the purpose of estimating costs of an on-site energy efficiency assessment and report, an average of 40 sub-contractor hours can be expected. For the purpose of estimating costs of an on-site pollution prevention assessment and report, an average of 80 sub-contractor hours can be expected. For the purpose of estimating costs of an on-site energy audit and report, an average of 100 sub-contractor hours can be expected. No additional charges will be allowed.

Overhead costs will be limited to a set percentage of the total cost for staff and subcontractor salaries/wages.

A. TECHNICAL SERVICES: On-site Energy Efficiency Assessments, P2 Assessments, Energy Audits, and Technical Assistance Hours Requests

1.	Total Staffing Costs		\$43,800.00
2.	Total Subcontractor Costs		\$538,998.10
3.	Total Supplies and Materials		\$3,255.00
4.	Total Direct Costs		\$72,091.09
	Itemize on separate sheet.		
5.	Overhead Costs	Item 1 \$43,800.00	
		Item 2 \$538,998.10	
		\$582,798.10 (@15%)	\$87,419.72

SUBTOTAL A \$745,563.91

B. TECHNICAL SERVICES: Recruitment

1.	Total Staffing Costs		\$5,250.00
2.	Total Subcontractor Costs		\$2,974.85
3.	Total Supplies and Materials		\$465.00
4.	Total Direct Costs		\$1,505.87
5.	Overhead Costs	Item 1 \$5,250.00	
		Item 2 \$2,974.85	
		\$8,224.85 (@15%)	\$ 1,233.73

SUBTOTAL B \$11,429.45

C. TECHNICAL SERVICES: Training

1.	Total Staffing Costs		\$21,900.00
2.	Total Subcontractor Costs		\$68,119.00
3.	Total Supplies and Materials		\$1,395.00
4.	Total Direct Costs		\$4,517.61
5.	Overhead Costs	Item 1 \$21,900.00	
		Item 2 \$68,119.00	
		\$90,019.00 (@15%)	\$13,502.85

SUBTOTAL C \$109,434.46



D. TECHNICAL SERVICES: Quality Assurance		
1.	Total Staffing Costs	\$15,000.00
2.	Total Subcontractor Costs	\$3,606.70
3.	Total Supplies and Materials	\$465.00
4.	Total Direct Costs	\$1,255.87
5.	Overhead Costs	
	Item 1	\$15,000.00
	Item 2	\$3,606.70
	\$18,606.70 (@15%)	\$2,791.01
	SUBTOTAL D	\$23,118.58
E. TECHNICAL SERVICES: Program Measurement		
1.	Total Staffing Costs	\$9,000.00
2.	Total Subcontractor Costs	\$18,955.50
3.	Total Supplies and Materials	\$465.00
4.	Total Direct Costs	\$1,255.87
5.	Overhead Costs	
	Item 1	\$9,000.00
	Item 2	\$18,955.50
	\$27,955.50 (@15%)	\$4,193.33
	SUBTOTAL E	\$33,869.70
F. TECHNICAL SERVICES: Technology Transfer and Marketing		
1.	Total Staffing Costs	\$7,500.00
2.	Total Subcontractor Costs	\$13,986.75
3.	Total Supplies and Materials	\$465.00
4.	Total Direct Costs	\$4,055.87
5.	Overhead Costs	
	Item 1	\$7,500.00
	Item 2	\$13,986.75
	\$21,486.75 (@15%)	\$3,223.01
	SUBTOTAL F	\$29,230.63
G. Program Management		
1.	Total Staffing Costs	\$57,150.00
2.	Total Subcontractor Costs	\$13,180.00
3.	Total Supplies and Materials	\$2,790.00
4.	Total Direct Costs	\$7,535.22
5.	Overhead Costs	
	Item 1	\$57,150.00
	Item 2	\$13,180.00
	\$70,330.00 (@15%)	\$10,549.50
	SUBTOTAL G	\$91,204.72
	TOTAL COST (SUBTOTALS A through G)	\$1,043,851.45

**Technical Assistance Hour
UNIT PRICE:**

**Technical Assistance Hours Total
(SUBTOTAL A):**

\$29.82 x 25,000 hours = **\$745,563.91**

Unit Price includes related expenses and overhead



Subcontractors - Assessors

<u>Project Designation</u>	<u>Assessments</u>		<u>Reports</u>		<u>Assessments Mileage</u>		<u>Other Cost</u>	<u>Cost per Assessment</u>	<u>Number of Assessments</u>	<u>Total Cost</u>
	<u>Hours</u>	<u>Rate</u>	<u>Hours</u>	<u>Rate</u>	<u>Number of Miles</u>	<u>Cost</u>				
		[18/Hour]		[18/Hour]		[0.362/Mile]				
EE [1]	12	216	18	324	150	54	15	609	400	243,720.00
P2 [2]	25	450	35	630	150	54	25	1,159	50	57,965.00
EA [3]	30	540	45	810	150	54	30	1,434	25	35,857.50
										337,542.50
Per diem: 300 Assessor Days at \$11.25/day										3,375.00
Per diem: 20 Assessor Overnight Stays at \$100/day										2,000.00
Total 18-Month Assessment Cost for Assessors										\$ 342,917.50

- [1] Energy Efficiency (Balance of hours reported under Editors)
- [2] Pollution Prevention (Balance of hours reported under Editors)
- [3] Energy Audits (Balance of hours reported under Editors)

Training

Training includes three (3) one-day sessions for all subcontractors, on-the-job training for 10 new assessors, targeted training for agricultural business, energy auditor certification and funding for attendance at special interest conferences.

<u>Number of Assessors</u>	<u>Training</u>		<u>Per Diem</u>		<u>Per Diem</u>		<u>Mileage</u>		<u>Other Cost</u>	<u>Total Cost</u>
	<u>Hours</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number of</u>	<u>Cost</u>		
		[18/Hour]		[11.25]		[100]		[0.362/Mile]		



					<u>Miles</u>					
50	10	9,000	50	563	200	3,620	150	13,332.50		
50	10	9,000	50	563	200	3,620	150	13,332.50		
50	10	9,000	50	563	200	3,620	150	13,332.50		
10	16	2,880			100	362	30	3,272.00		
3	60	3,240	9	101	6	600	200	217	30	4,188.45

Training (Continued)

<u>Number of Assessors</u>	<u>Training Hours</u>	<u>Training Rate</u>	<u>Per Diem Number</u>	<u>Per Diem Rate</u>	<u>Per Diem Number</u>	<u>Per Diem Rate</u>	<u>Mileage Number of Miles</u>	<u>Mileage Cost</u>	<u>Other Cost</u>	<u>Total Cost</u>
		[18/Hour]		[11.25]		[100]		[0.362/Mile]		
3	26	1,404	3	34			200	217	3,990	5,644.95
5	8	720					100	181		901.00
Total 18-Month Training Cost for Assessors										\$ 54,003.90

Recruiting

<u>Recruiting Hours</u>	<u>Recruiting Rate</u>	<u>Mileage Number of Miles</u>	<u>Mileage Cost</u>	<u>Total Cost</u>
	[18/Hour]		[0.362/Mile]	
50	900	750	272	\$ 1,171.50



Total 18-Month Recruiting Cost for Assessors

\$ 1,171.50

Marketing and Technology Transfer

<u>Marketing and TT</u>				<u>Mileage</u>		<u>Other</u>	
<u>Hours</u>	<u>Rate</u>			<u>Number of Miles</u>	<u>Cost</u>	<u>Cost</u>	<u>Total Cost</u>
	[18/Hour]				[0.328/Mile]		
225	4,050			1,000	320	600	\$ 4,970.00

Total 18-Month Marketing and Technology Transfer Cost for Assessors

\$ 4,970.00

Program Measurement

<u>Measurement</u>		<u>Per Diem</u>		<u>Per Diem</u>		<u>Mileage</u>		<u>Other</u>	
<u>Hours</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number of Miles</u>	<u>Cost</u>	<u>Cost</u>	<u>Total Cost</u>
	[18/Hour]		[11.25]		[100]		[0.362/Mile]		
1,000	18,000	10	113			1,500	543	300	\$ 18,955.50

Total 18-Month Annual Program Measurement Cost for Assessors

\$ 18,955.50

Technical Assistance

<u>Technical Assistance</u>		<u>Per Diem</u>		<u>Per Diem</u>		<u>Mileage</u>		<u>Other</u>	
<u>Hours</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number of Miles</u>	<u>Cost</u>	<u>Cost</u>	<u>Total Cost</u>
	[18/Hour]		[11.25]		[100]		[0.362/Mile]		
2,500	45,000	50	563	8	800	24,000	8,688	500	\$ 55,550.50



Total 18-Month Technical Assistance Cost for Assessors

\$ 55,550.50

Total 18-Month Cost for Assessor Activity

\$ 477,568.90

Other Subcontractors

<u>Project Designation</u>	<u>Editor</u>		<u>Other Cost</u>	<u>Number of Assessments</u>	<u>Total Cost</u>
	<u>Hours</u>	<u>Rate</u> [20/Hour]			
EE [1]	6	120	105	400	48,105.00
P2 [2]	12	240	185	50	12,185.00
EA [3]	15	300	235	25	7,735.00
					\$ 68,025.00

Other Subcontractors (Continued)

<u>Project Designation</u>	<u>Associate Editors</u>		<u>Other Cost</u>	<u>Number of Assessments</u>	<u>Total Cost</u>
	<u>Hours</u>	<u>Rate</u> [20/Hour]			
EE [1]	4	80	40	400	32,040.00
P2 [2]	8	160	75	50	8,075.00
EA [3]	10	200	95	25	5,095.00
					\$ 45,210.00



Total 18-Month Cost for Editors

\$ 113,235.00

- [1] Energy Efficiency (Initial hours reported under Assessments)
- [2] Pollution Prevention (Initial hours reported under Assessments)
- [3] Energy Audits (Initial hours reported under Assessments)

<u>Assistant Project Manager [1]</u>		Per Diem		Per Diem		Mileage		Other	<u>Total Cost</u>
<u>Hours</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number</u>	<u>Rate</u>	<u>Number of Miles</u>	<u>Cost</u>	<u>Cost</u>	
	[25/Hour]		[11.25]		[100]		[0.362/Mile]		
1,350	33,750	15	150	6	600	3,500	1,267	300	<u>\$ 36,067.00</u>

Total 18-Month Cost for Assistant Project Manager

\$ 36,067.00

[1] See Cost Allocation Below

Other Subcontractors (Continued)

<u>Accountant [2]</u>		Other	<u>Total Cost</u>
<u>Hours</u>	<u>Rate</u>	<u>Cost</u>	
	[50/Hour]		
650	32,500	450	<u>\$ 32,950.00</u>

Total 18-Month Cost for Accountant

\$ 32,950.00

[2] See Cost Allocation Below



Total 18-Month Cost for Other Subcontractor Activity \$ 182,252.00

Total 18-Month Cost for Assessor and Other Subcontractor Activity \$ 659,820.90

Cost Allocation

	[1]	[2]
Assessments	30%	50%
Recruiting	5%	
Training	30%	10%
Quality Assurance	10%	
Program Measurement		
Marketing and Technology Transfer	25%	
Program Management		40%
	100%	100%

Staffing

<u>Position *</u>	<u>Hours</u>	<u>Rate</u>	<u>Total Cost</u>
Project Manager [3]	1,500	40	60,000.00
Assoc. Project Mgr. [4]	1,500	30	45,000.00
Office Manager [5]	2,730	20	54,600.00
Total 18-Month Cost for Staffing			<u><u>\$ 159,600.00</u></u>

Cost Allocation *

	[3]	[4]	[5]
Assessments	5%	30%	50%



Recruiting	5%	5%	
Training	10%	5%	25%
Quality Assurance	10%	20%	
Program Measurement	15%		
Marketing and Technology Transfer	5%	10%	
Program Management	50%	30%	25%
	100%	100%	100%

Direct Costs

<u>Specific</u>	<u>Total Cost</u>
Assessors: Equipment	3,000.00
Assessors: Insurance	60,000.00
Technical Assistance: Degree Day Subscription	300.00
Training: Manuals	750.00
Recruiting: Advertising	250.00
Marketing: Brochures, Mailings	2,000.00
Business Cards	800.00
	\$ 67,100.00

Direct Costs (Continued)

<u>General (See Cost Allocation [6])</u>	<u>Total Cost</u>
Employer Cost for Social Security and Medicare (0.0765%)	12,209.40
Employer Cost for State Unemployment (0.027%)	1,458.00
Insurance: General Liability	10,400.00
Workers' Compensation	1,050.00
	\$ 25,117.40
Total 18-Month Cost for Direct Costs	\$ 92,217.40

Cost Allocation [6]



Assessments	35%
Recruiting	5%
Training	15%
Quality Assurance	5%
Program Measurement	5%
Marketing and Technology Transfer	5%
Program Management	30%
	100%

Supplies and Materials

General (See Cost Allocation [7])

Office Supplies	4,650.00
Postage	3,750.00
Stationery and Envelopes	900.00
Total 18-Month Cost for Supplies and Materials	\$ 9,300.00

Supplies and Materials (Continued)

Cost Allocation [7]

Assessments	35%
Recruiting	5%
Training	15%
Quality Assurance	5%
Program Measurement	5%
Marketing and Technology Transfer	5%
Program Management	30%
	100%



Cost Summary

18-Month Contract Cost for Indirect Costs	\$ 819,420.90
15% Overhead	\$ 122,913.14
18-Month Contract Cost for Direct Costs and Supplies and Material	<u>\$ 101,517.40</u>
Total 18-Month Contract Cost	<u><u>\$ 1,043,851.44</u></u>



Attachment B, Definition of Terms

TERMS	DEFINITIONS
CONTRACTOR	The successful Bidder who is awarded a contract.
RETAP	“RETAP” means the Michigan Retired Engineer Technical Assistance Program, established under Section 14511, Part 145, Waste Reduction Assistance, Natural Resources and Environmental Protection Act (NREPA), 1994, PA 451, as amended. This program provides pollution prevention (P2) assistance pursuant to Section 14504 of the NREPA. Retired engineers, scientists, and other qualified professionals participating in the program conduct this assistance.
POLLUTION PREVENTION (P2)	“Pollution prevention” means source reduction and environmentally sound on-site or off-site reuse or recycling. For purposes of this Request for Proposal, P2 opportunities include energy efficiency opportunities. Waste treatment, control, management, and disposal are not considered P2.
RETAP PROFESSIONALS, RETAP ASSESSORS	The terms “RETAP professionals” and “RETAP assessors” are used interchangeably. They are the retired engineers, scientists, and other qualified professionals who participate in the program. The RETAP assessors have, on average, 35 years of experience in Michigan industry.
ELIGIBILITY	“Eligibility” refers to the priorities set by the Department of Energy, Labor and Economic Growth (DELEG) for the assistance based on demand, funds, and the needs of the applicants; taking into consideration the most effective use of the assistance. Currently, on-site assessments are available to businesses with fewer than 500 full-time employees in this state. Institutions of any size are also eligible to receive on-site P2 assessments.
ENERGY AUDIT	An “energy audit” is broadly defined as an in-depth facility review by two or more RETAP professionals to recommend energy saving improvements. A typical energy audit will provide detailed project costs and savings information with a high level of confidence sufficient for capital investment decisions similar to, but in more detail, than an energy assessment. The audit typically focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. An energy audit is usually conducted by or approved by a certified energy manager or professional engineer.
FULL-TIME EMPLOYEE (FTE)	A “full-time employee” means an individual that works at the facility 2,080 hours per year. It is calculated by dividing the total number of employee hours per year by 2,080.



INSTITUTION	An “institution” means any public entity including schools, hospitals, and local government agencies.
ON-SITE ENERGY EFFICIENCY ASSESSMENT	An “on-site energy efficiency assessment” is a building/facility review by one or more RETAP assessor(s) to recommend energy and associated cost-saving opportunities. It is not regulatory and does not include “hands-on” assistance with implementation. It typically requires a pre-assessment for purposes of collecting needed background information on the building/facility structure, equipment, operations, energy/utility usages, energy demand and power factor, etc. For purposes of this Request for Proposal, a complete on-site energy efficiency assessment includes the delivery of a final written assessment report to the accessed facility.
ON-SITE POLLUTION PREVENTION (P2) ASSESSMENT	An “on-site P2 assessment” is an evaluation of the equipment, practices, and operations of a facility by one or more RETAP assessor(s) to recommend P2 and cost-saving opportunities. It is not regulatory and does not include “hands-on” assistance with implementation. It typically requires a pre-assessment for purposes of collecting needed background information on the facility’s operations, waste generation, and material and utility usages. For purposes of this Request for Proposal, a complete on-site P2 assessment includes the delivery of a final written assessment report to the accessed facility.
CONFIDENTIALITY	“Confidentiality” applies to information on companies assessed by the RETAP. The contractor must not divulge facility names or proprietary data. The funding source for any contract awarded under this RFP is the U.S. Department of Energy, State Energy Program (SEP) PY2009, allocated under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5. Potential Bidders should be advised that the SEP is subject to special federal terms and conditions in the ARRA. Therefore, recipients are also subject to these terms and conditions superseding confidentiality privileges for all non-proprietary information. With regard to public entities, the Freedom of Information Act applies and the report in possession of the entity may not be confidential.
TECHNICAL ASSISTANCE	“Technical assistance” includes on-site energy efficiency assessments, on-site P2 assessments, on-site energy audits, and on-site assistance to facilities for specialized assignments specified by the DELEG, such as detailed cost analyses, process mapping, engineering design work, and evaluations of grant proposals.



Attachment C, Current Contract Rates for RETAP Assessors

The current contract rates of compensation for the RETAP professionals are given below. Contractor must adhere to Department of Technology, Management and Budget Vehicle and Travel Services Schedule of Travel Rates (see below) and include a salary rate that reflects at a minimum, the current Contract rate.

Per Diem (flat rate, not actual costs):

Overnight: \$100.00 - food and lodging/day (per diem)
If not overnight: 12 hours+ \$30.00/day
6-12 hours \$11.25/day
Less than 6 hours – no per diem

Travel Expense: Standard DTMB Mileage Rate, currently \$0.362 per mile, automobile travel

Salary: \$18.00 per hour worked (excludes times for meals)
On-site and report writing
Actual travel time round trip between home and assessment site

Miscellaneous: Actual expense for telephone, fax, postage, supplies, etc.



Attachment C - continued

**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET, VEHICLE AND TRAVEL SERVICES (VTS)
SCHEDULE OF TRAVEL RATES FOR CLASSIFIED and UNCLASSIFIED EMPLOYEES
RATES EFFECTIVE OCTOBER 1, 2009**

MICHIGAN SELECT CITIES *

Meals and Lodging	
Lodging**	\$65.00
Breakfast	8.75
Lunch	8.75
Dinner	21.00

IN-STATE ALL OTHER

Meals and Lodging	
Lodging **	\$65.00
Breakfast	
7.25	
Lunch	7.25
Dinner	
16.50	

OUT-OF-STATE SELECT CITIES *

Meals and Lodging		Contact Conlin
Travel		
Lodging **		for reservations
Breakfast		11.00
Lunch		11.00
Dinner		22.00

OUT-OF-STATE ALL OTHER

Meals and Lodging		Contact Conlin
Travel		
Lodging **		for reservations
Breakfast		8.75
Lunch		8.75
Dinner		20.50

Incidental Costs per day (with overnight stay) \$2.00

Mileage Rates -

Standard Rate \$.362 per mile

** Lodging available nightly at state rate, or call Conlin Travel (517) 492-1402.



Attachment C - continued

SELECT HIGH COST CITY LIST

TRAVEL RATE REIMBURSEMENT FOR CLASSIFIED and UNCLASSIFIED EMPLOYEES
EFFECTIVE OCTOBER 1, 2009

MICHIGAN SELECT CITIES AND COUNTIES	
CITIES	COUNTIES
Benton Harbor Charlevoix Detroit Mackinac Island Petoskey St. Joseph	All of Wayne All of Oakland

OUT-OF-STATE SELECT CITIES			
STATE	SELECT CITY OR COUNTY AS DEFINED	STATE	SELECT CITY OR COUNTY AS DEFINED
ARIZONA	Sedona Yavapai	MINNESOTA	Minneapolis / St. Paul Hennepin County Ramsey County
CALIFORNIA	Los Angeles (Los Angeles, Orange & Ventura Counties, and Edwards AFB) / Monterey / Napa San Diego / San Francisco Santa Monica / Santa Rosa Yosemite National Park	NEW JERSEY	Cape May / Ocean City
COLORADO	Aspen / Vail	NEVADA	Las Vegas , Stateline Carson City (Douglas County)
CONNECTICUT	Bridgeport / Danbury Lakeville / Salisbury New Haven / New London / Groton	NEW YORK	Floral Park / Garden City Glen Cove / Great Neck Roslyn (Nassau County) Manhattan (the borough of, Manhattan, Brooklyn, Queens, Staten Island) River Head / Ronkonkoma Melville / Smithtown / Huntington Station, (Suffolk County)
DISTRICT OF COLUMBIA	Washington DC (Also the cities of Alexandria, Falls Church, Fairfax & Counties of Arlington, Loudon Fairfax, in Virginia and the Counties of Montgomery and Prince George in Maryland	PENNSYLVANIA	Philadelphia
FLORIDA	Key West / Naples / Palm Beach	RHODE ISLAND	Jamestown / Middletown Newport (Newport County)
ILLINOIS	Chicago (Cook and Lake Counties)	UTAH	Park City (Summit County)
MASSACHUSETTS	Boston (Suffolk County) / Cambridge Martha's Vineyard / Nantucket	VERMONT	Stowe (Lamoille County)
MARYLAND	See District of Columbia Annapolis / Ocean City	VIRGINIA	Alexandria, Falls Church, Fairfax
		WASHINGTON	Seattle
		WISCONSIN	Wisconsin Dells



Attachment D, Generalized Energy Audit Report Content

The generalized content of a typical energy audit report is presented below for illustrative purposes only. The Contractor, in cooperation with the DELEG RETAP Manager, will review established energy auditing guidelines / resources (such as the ASHRAE Procedures for Commercial Building Energy Audits) to develop a template for the content and format of a RETAP energy audit report. The template will require approval by the DELEG Contract Administrator prior to being used by the Contractor. At this time, DELEG envisions the template closely paralleling the requirements outlined in Part II of the “Rebuild Michigan Technical Energy Analysis Guidelines” available online at:

http://www.michigan.gov/documents/dleg/TEA_Guidelines_Nov_08_255550_7.pdf

- (i) Executive summary providing a listing of all potential energy-saving opportunities typically in table format, including associated savings and costs.
- (ii) Introduction and background providing the purpose and limitations of the program and energy audit, including auditor(s) qualifications and report certification(s).
- (iii) A narrative description of the facility being audited including operations; its energy system(s) and usage; and activity profile, including graphical display. The annual quantity and price per unit of all energy types paid by the customer over the previous 12 months from the date of the audit are provided.
- (iv) A technical analysis discussing the possible interactions of the potential improvements with existing energy systems, including:
 - a) Estimated annual energy and energy costs savings expected from each possible improvement recommended.
 - b) Estimate of all direct and attendant indirect costs of each improvement.
 - c) Ranking of potential improvement measures by cost effectiveness.
- (v) A narrative description of each recommended improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability. The narrative additionally provides:
 - a) Preliminary specifications for critical components.
 - b) Preliminary drawings of project layout, including any related structural changes.
 - c) Baseline data compared to projected consumption, together with any explanatory notes. When appropriate, before-and-after data in terms of consumption per unit of production, time or area. Included are at least one year’s bills for those energy sources/fuel types affected by this project, and utility rate schedules, if appropriate.
 - d) Significant changes in future related operations and maintenance costs, including person-hours are identified.
 - e) A description on how outcomes should be measured annually.
- (vi) Attachments providing required tables, graphical displays, and associated analyses support of energy saving recommendations.



Attachment E, Protocol For RETAP Assessments

Purpose: The purpose of this procedure is to establish minimum standards for conducting Michigan Retired Engineer Technical Assistance Program (RETAP) assessments at businesses or institutions that have invited the assistance. It describes the protocol to be followed by the RETAP teams and the technical assistance contractor.

I. *Assessment Request*

- A. Receive request for assessment and make sure the business or institution understands the nature of RETAP and a RETAP assessment.
- B. Discuss company concerns and the RETAP procedures.
- C. Obtain information about the company and prepare tracking documents:
 1. Name, title, address, and phone number of contact person.
 2. Number of employees, square footage, and other relevant information, such as directions to facility. Assign tracking number.
 3. Inform the contact person that the company will be contacted within a few days by an assessor, designated as the Team Leader, to set up a pre-assessment.
 4. Request a copy of the most recent 12 months of utility bills (electrical, gas, water, waste disposal, etc.) to be ready for pre-assessment.
 5. Request other relevant information, such as process flow diagrams; if possible, this should be available for the pre-assessment.
 6. Find out about the company's processes and other information by looking at their Website and other sources, such as the Michigan Manufacturers Directory.
 7. Send a letter of acknowledgement immediately, including a preassessment folder containing additional information, a detailed checklist of requested technical information, and legal forms.
- D. Assign an appropriate assessor as the assessor as the Team Leader. Provide the information to the assessor, which has been entered on the tracking form. The responsibility to continue the process now shifts to the Team Leader.
- E. The Team Leader establishes the date and time for the initial site visit (hereafter called "preassessment visit") and for an on-site assessment, if appropriate at this time.

II. *Preassessment Visit*

This phase usually takes approximately one to three hours of on-site time.

- A. Select one RETAP analyst (Team Leader) to make a plant visit, based on location and expertise relative to the company to be assessed. Provide available information regarding company and related industry information to the Team Leader.
- B. In an ongoing training process, *RETAF* and the RETAP team should establish credibility by conducting research to obtain pollution prevention (P2) information relevant to the industry, prior to the pre-assessment or assessment. The purpose is to refresh knowledge and learn about newly-emerged P2 opportunities for possible discussion with company representatives at this time.
- C. Discuss company concerns and expectations with the highest level of management available, for brief introduction and information exchange, obtaining company support and approval.
- D. Obtain plant information, e.g., physical layout and data on wastes, using pre-assessment checklist. Obtain signatures on the liability disclaimer forms.
- E. Ascertain the company's level of P2 knowledge. Find out what waste reduction efforts the company has already implemented.



- F. Conduct a brief plant tour.
- G. Schedule assessment (if not previously arranged).
- H. Prepare documentation for the visit and develop a file for the company assessment.
- I. Confirm participation of selected team for full on-site assessment.

III. **On-Site Assessment**

This phase can take one half-day to two full days of on-site time.

- A. If necessary, conduct research and study P2 methods to address opportunity areas that surface before and during the pre-assessment.
- B. The RETAP assessors meet briefly before starting time. If not already done, the Team Leader shares the pre-assessment information and the Team Leader assigns a report writer, if it is not himself.
- C. The Team Leader will lead the discussion at the opening meeting with the company officials (highest levels possible).
 - 1. Introduce assessors. Describe their backgrounds and experience.
 - 2. Discuss company concerns and assessment approach/techniques.
- D. Guided company tour – thorough review of process and waste streams. Pay special attention to problem areas and noted opportunities for waste reduction, cost savings, and improvements.
 - 1. Offer suggestions diplomatically. Remember, the company hosts know more about their company than the assessor does.
 - 2. Look at everything possible, including the outdoors. Ask to look behind closed doors and into areas not in the mainstream of the process; if refused, accept the refusal graciously.
 - 3. Assessors should ask as many questions as necessary to understand what they are seeing.
 - 4. Take many notes.
 - 5. Team members will assist the Team Leader in preparing a list of items to review with the company during the exit interview.
- E. After the tour, team members meet privately for a short debriefing session. Review assessment notes for discussion at the exit interview.
- F. Conduct an exit interview with company officials to ensure accuracy of notes and discuss findings briefly.
- G. Compliment the company on one or more items they have done, or are doing well.
- H. Thank the host team and leave.
- I. The Team Leader is to notify the *RETAP* office of assessment completion within 24 hours following assessment.

IV. **Assessment Report**

The report is sent to the facility within 45-60 days after assessment.

- A. Team selects a report writer, and members send copies of notes to team report writer, within two-three days after the assessment.
- B. If necessary, conduct brief research for P2 methods to address opportunity areas that surfaced during assessment.
- C. Prepare draft report and send to the *RETAP* office within two-three weeks following assessment. Draft is forwarded to chief editor.
- D. Edit draft, revise as needed. As necessary, discuss the draft with the team writer. Send a copy of the revised draft to the RETAP team writer for review and comments: to be returned within one week of receipt. Finalize editing and assembly of the report.
- E. Send the report to business or organization.



- F. Contractor calls company eight weeks after report is sent to determine whether the report has been received, read, and understood. The Contractor asks whether any corrections are needed.

V. *Follow-Up*

- A. Follow-up with the assessed company at 12-, and 24-month intervals, after the report is sent. Seek the potential for developing case studies and provide additional information, if desired.
- B. At above intervals, schedule Team Leader to revisit the company to complete the survey form regarding implementation of recommendations, cost savings, and quantified waste reduction.



Attachment F, Pollution Prevention Assessment Report

Company Name
Address

COMPANY ASSESSMENT TEAM

Company Team Member's Name(s) and Title(s)

**RETIRED ENGINEER TECHNICAL ASSISTANCE PROGRAM
(RETAP) ASSESSMENT TEAM**

Team Leader's Name
Report Writer's Name
Other Team Members

PREPARED BY THE

Name of Contractor

ON BEHALF OF THE

BUREAU OF ENERGY SYSTEMS

MICHIGAN DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH

Assessment Date: *month, day, and year*

Report Mailed: *month, day, and year*



(Sample report format)
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Hazardous Waste, Handling, and Disposal (HW)	#
Medical Waste, Handling, and Disposal (MW)	#
Solid Waste, Handling, and Disposal (SW).....	#
Electricity (EL).....	#
Lighting (LT).....	#
Propane Gas (PG).....	#
Water Heating (WH).....	#
Heating and Cooling (HC)	#
Water and Septic (WS)	#
Vehicle Fuel (VF)	#
IV. Conclusion	#
V. Attachments.....	#



Purpose and Objectives

- Explain the purpose and objectives of the RETAP assessments.

Executive Summary

- See Executive Summary table below.

I. Introduction and Background

- Date(s) of site visit(s).
- Description of business.
- Size of business.
- Services or products provided by business.

II. Description of Facilities and Operations

- Describe the process and equipment used (efficiencies, leaks, spills, etc.).
- Process flow diagrams and material balances.
- Raw materials used (sources, types, quantities, compositions, trends, handling, and storage).
- Product, utility, water, sewer, and raw material costs.
- Operating and maintenance costs.
- Size of facility, layout if important.
- Processing methods.

III. Current Status, Waste Streams, and Recommendations for Improvement

- Wastes generated (sources, types, quantities, compositions, trends, handling, treatment, and storage)
- Disposal/recycling practices.
- Prioritized sites of significant waste generation, including company input.
- Waste treatment and disposal costs.
- Utility costs.

A. Opportunities for Pollution Prevention

- General operating practices (such as good housekeeping, waste segregation, inventory control, material handling, waste tracking, maintenance, and better operating procedures).
- Specific management options for each waste stream.
- Feasibility analysis of options.
- Prioritized list of pollution prevention options (based on the RETAP assessor and company personnel input).



- Costs and resources required for priority options.
- Savings and benefits.
- Production impacts.
- Liabilities.

B. Opportunities for Energy Efficiency

- General operating practices.
- Specific management options for pumps, motors, etc.
- Feasibility analysis of options.
- Prioritized list of energy efficiency options (based on RETAPer and company personnel input.
- Costs and resources required for priority options.
- Savings and benefits.
- Production impacts.
- Liabilities.

IV. Conclusion

- Should indicate appreciation to the business for the assessment opportunity.
- Summary of assessment and recommendations.

V. Attachments

- This section should include a list of the State staff to contact for further information on waste reduction and energy efficiency. The contractor must work with the Bureau of Energy Systems to develop this list and update periodically.
- Include other sources of assistance.



Attachment G, Current Monthly Report (Month, Year)

A(1) Assessment Activity – The following summarizes assessment activity for the month of _____.

Requests for Assessments	Pre-assessments	Assessments	Reports Mailed
1. (Date of Request) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	1. (Date of Pre-assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	1. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	1. (Date Mailed) Type of Business; County; Facility Identifier No.; Facility SIC Codes.
2. (Date of Request) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	2. (Date of Pre-assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	2. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	2. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.
3. (Date of Request) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	3. (Date of Pre-assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	3. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	3. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.
4. (Date of Request) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	4. (Date of Pre-assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	4. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	4. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.
5. (Date of Request) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	5. (Date of Pre-assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	5. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.	5. (Date of Assessment) Type of Business; County; Facility Identifier No.; Facility SIC Codes.
Etc.	Etc.	Etc.	Etc.

Total number of requests received from (date) through (date) is _____.

Total number of assessments completed from (date) through (date) is _____.

Total number of assessment reports mailed from (date) through (date) is _____.



(A)(2) Follow-up Phone Calls

The following table summarizes follow-up phone call activity for the month of month/year

	<u>Date</u>	<u>Tracking Number</u>	<u>Jobs Created/Retained</u>
1.	Date	Id No.	##
2.			

Total number of follow-up phone calls completed from mm/dd/yy through mm/dd/yy is #.

(A)(3) Technical Assistance (TA) Hours

The following table summarizes TA Hours activity for the month of month/year

	<u>Request</u>		<u>On-site</u>		<u>Mailed</u>	
1.	Date	Id No.	Date	Id No.	Date	Id No.

Total number of TA Hours reports mailed from mm/dd/yy through mm/dd/yy is #.

(A)(4) Pollution Prevention/Energy Efficiency Assessments - Private Entities - Waiting List

The following table summarizes P2/E2 assessment requests by private entities for the month of month/year

	<u>Date</u>	<u>Tracking No.</u>	<u>County</u>	<u>SIC</u>	<u>Business Description</u>
1	Date	Id No.	County	SIC code	Description

Total number of requests placed on waiting list from mm/dd/yy through mm/dd/yy is #.

(A)(5) Cancelled Assessments and Technical Assistance (TA) Hours

The following table summarizes assessments and TA Hours cancelled in the month of month/year

	<u>Date</u>	<u>Tracking No.</u>	<u>Reason Cancelled</u>
1	Date	Id No.	Reason



Total number of assessments cancelled from mm/dd/yy through mm/dd/yy is one #.

Total number of TA Hours cancelled from mm/dd/yy through mm/dd/yy is #.

(B) Recruiting

Discussion of recruiting activities for month

(C) Training

Discussion of training activities for month

(D) Quality Assurance

Discussion of quality assurance activities for month

(E) Program Measurement

Discussion of program measurement activities for month

(F)(1) Technology Transfer

Discussion of technology transfer activities for month

(F)(2) Marketing

Discussion of marketing activities for month

(G) Program Management

Discussion of program management activities for month

(H) Challenges Encountered

Discussion of challenges / barriers encountered in the month



MEASUREMENT OF ASSESSMENTS

Number of Businesses Surveyed in (*Month, Year*) = _____

SURVEY SUMMARY

Average Assessment Effectiveness Rating = _____

Number of Companies Willing to be a Case Study = _____

Number of Companies with Increased Awareness of Wastes = _____

Recommendations Total	_____	<u>100%</u>
Recommendations Fully Implemented	_____	_____%
Recommendations Partially Implemented	_____	_____%
Recommendations Planned to be Implemented	_____	_____%
Recommendations Not Planned to be Implemented	_____	_____%
Recommendations Not Responded to	_____	_____%



ID #	SIC#	# Emp.	Team Ldr.	Rpt. Writer	Assessment Team Members	PM	Rating	CS?	WA	Rec	Full	Part	Plan	NP	NR

Column Heading Code

PM – Number of months after RETAP assessment report has been mailed to the business that program measurement is made.

Rating – Value of the RETAP assessment to the company on a scale of 1 to 10.

CS? – Will the company allow information on the RETAP assessment to be used for a case study or made public at a technical conference?

WA – Has the RETAP assessment increased employee concerns about waste generation?

Rec – Number of RETAP recommendations.

Full – Number of RETAP assessment recommendations fully implemented.

Part – Number of RETAP assessment recommendations partially implemented.

Plan – Number of RETAP assessment recommendations planned for implementation.

NP – Number of RETAP assessment recommendations not planned to be implemented.

NR – Not responded to. Generally, being investigated but decision not made regarding implementation.



Attachment H, Monthly Invoice Report

State of Michigan Contract Number _____

Summary of Expenses for (Month, Year)

	A	B	C	D	E	F	G	
	Assessments Technical Assistance	Recruitment	Training	Quality Assurance	Program Measurement	Technology Transfer Marketing	Program Management	TOTAL
Staffing Costs								
Subcontractor Costs								
Supplies/Materials								
Direct Costs								
Sub-Total								
Overhead Costs								
Total								
CONTRACT AMOUNT								
Expenditures for Month, Day, Year								
Expenditures for Jan. 1 – Month day, Year								
Expenditures for Year-to-Date								
Expenditures for Third Contract Year								
Expenditures for Second Contract Year								
Expenditures for First Contract Year								
Expenditures for Contract-to-Date								
Contract Balance								



State of Michigan Contract Number _____
Detail of Expenses for (Month, Day, Year)

Period End	Asses. Number	Payee	Hours	Code	Total	Detail of Total														
						A [ATA]		B [R]		C [T]		D [QA]		E [MEA]		F [TTM]		G [PM]		
						Cost	Expenses	Cost	Expenses	Cost	Expenses	Cost	Expenses	Cost	Expenses	Cost	Expenses	Cost	Expenses	
Staffing Costs																				
Sub-Contractor Costs																				
Supplies/ Materials																				
Direct Costs																				
Sub-Total																				
Overhead Costs																				
TOTAL																				

Code Explanations			
A	Assessment	PP	Project Planning
AE	Associate Editor	Q	Quality Assurance
E	Editing Reports	R	Recruiting
ES	Editing Supplies	RW	Report Writing
MK	Marketing	T	Training
OS	Office Supplies	TA	Technical Assistance
PA	Pre-Assessment	TC	Training Coordinator
PM	Program Measurement	TT	Technology Transfer
PMC	Program Measurement Coordinator		



Attachment I, Addendum to Article 3

3.020.1 Buy American Requirement (Section 1605)

-Designated country means:

- (1) A World Trade Organization Government Procurement Agreement country,
- (2) A Free Trade Agreement (FTA) country, or
- (3) A United States-European Communities Exchange of Letters country

Countries not in the Addendum to Part 2 include Bahrain, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman and Peru.

3.090.1 Publication

- a. **You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.**
- b. **An acknowledgement of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project as follows:**

Acknowledgement: "This material is based upon work supported by the Department of Energy under Award Number(s) *DE-EE0000166*."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, make any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."



STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

STANLEY "SKIP" PRUSS
DIRECTOR

OFFICIAL

ARRA FISCAL REPORTING

DATE: XXXXXXXX XX, 2010

SUBJECT: ARRA Fiscal Reporting

APPLICATION: Companies

PURPOSE: To establish Fiscal Reporting Procedures for ARRA funds for SEP

REFERENCE: American Recovery and Reinvestment Act of 2009 (Recovery Act) Section 1512

CONTACT: Marilyn Carey, DELEG, Financial Services, Federal Finance Manager

TELEPHONE: (517) 335-1198

FAX: (517) 241-2026

SUMMARY: President Barack Obama has called for an unprecedented level of transparency for how Federal dollars are being spent under the American Recovery and Reinvestment Act of 2009 (Recovery Act). As envisioned by the Recovery Act, this level of transparency is essential to drive accountability for the timely, prudent and effective spending of recovery dollars. It is critical that all recipients of employment and training funds under the Recovery Act prepare to implement the requirements of Section 1512 of the Recovery Act.

Section 1512 of the Recovery Act requires recipients to report on the use of Recovery Act funding, and provide detailed information, such as:

- *total amount of funds received
- *the amount spent on projects and activities by CFDA, including
- *name, address, completion status
- *estimates of jobs created and retained
- *details on payments to subrecipients/vendors



*the compensation for the top 5 officers if the recipient received 80% AND \$25M or more in annual gross revenue from Federal contracts, loans, grants and cooperative agreements AND the public does not have access to Sr. executive compensation.

Please note that this information is specific to section 1512 requirements and is IN ADDITION to all previous reporting requirements (ie. Financial Status reports including 269's, 9130's, RSA-2's, etc.)

Unfortunately, the Federal Office of Management and Budget may change the reporting requirements at any time. If these requirements do change, revised ARRA Fiscal Reporting instructions will be issued.

POLICY:

General Information:

Companies reporting on the Clean Energy Advance Manufacturing Projects for Section 1512 reporting of ARRA funds is to be done quarterly on a CASH basis. The schedule is as follows:

- Through March 26, 2010 due April 2, 2010
- Through June 25, 2010 due July 2, 2010
- Through September 24 2010 due October 1, 2010
- Through December 24, 2010 due January 3, 2011
- Through March 25, 2011 due April 1, 2011

The Company will receive an e-mail from DELEG Bureau of Energy systems on the Monday following the final reporting date of the quarter (indicated above) containing spreadsheets that should be used for the ARRA reporting.

The Company should complete the spreadsheet in accordance with the instructions that are attached to the spreadsheet. Most of the information will be completed. The Company will need to complete the fields highlighted in yellow. The information related to Number of Jobs Created/Retained, Narrative Description of the Jobs created/retained, and Expenditure Detail will need to be updated on a quarterly basis.

Reporting Requirements:

The reports can be either transmitted by fax to (517) 241-2026 or e-mailed to misereporting@michigan.gov. Due to the limited time that is available for reporting, please do not mail your reports.

PLEASE NOTE This information is specific to section 1512 requirements and is IN ADDITION to all previous reporting requirements.



Accounting Systems

Amounts/Information reported must be based on documentation on hand. The amounts/information reported is subject to review and audit, where any cost not properly documented could be identified as an audit exception and be disallowed.

EFFECTIVE: February 17, 2009

EXPIRATION: Continuing

SIGNATORY: SIGNED
Marilyn Carey, DELEG, Financial Services, Federal Finance Manager



Attachment J, National Policy Assurances to be Incorporated as Award Terms
(August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
2. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
4. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
5. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
6. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

1. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J. 1.
2. Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
 - A. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of



- Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.
- B. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
 - C. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).
 - D. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.
 - E. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
 - F. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).
3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.
 4. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1. **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.
2. **Animals and plants.**
 - A. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.
 - B. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>)



and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

- C. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended (“the Act,” 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1. **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.
2. **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).
3. **Lobbying.**
 - A. You must comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.
 - B. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).
 - C. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.
4. **Officials not to benefit.** You must comply with the requirement that no member of Congress must be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.



5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.
6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).
7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.
8. **Use of United States-flag vessels.**
 - A. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
 - B. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section must be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
9. **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.
10. **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**
 - A. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice



placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

- i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units;
 - ii. or Military recruiters' access to campuses, students on campuses, or information about students.
- B. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:
- i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
 - ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. **Historic preservation.** You must identify to us any:

- A. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- B. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12. **Relocation and real property acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. **Confidentiality of patient records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15. **Trafficking in Persons**

- A. Provisions applicable to a recipient that is a private entity.



- i. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - a. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - b. Procure a commercial sex act during the period of time that the award is in effect; or
 - c. Use forced labor in the performance of the award or subawards under the award.
 - ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - a. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - (1) Associated with performance under this award; or
 - (2) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.
- B. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- i. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - (a) Associated with performance under this award; or
 - (b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.
- C. Provisions applicable to any recipient.
- i. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - ii. Our right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - (a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (b) Is in addition to all other remedies for noncompliance that are



- available to us under this award.
- iii. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
 - iv. Definitions. For purposes of this award term:
 - (a) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - (b) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (c) “Private entity”:
 - (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (ii) Includes:
 - aa. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - bb. A for-profit organization.
 - (d) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.



Attachment K, Example Indemnification Agreement

Example Indemnification Agreement

Date: _____

Dear _____:
(Name of contact at Business requesting assessment)

Thank you for requesting a pollution prevention assessment for (Company Name)

_____ (herein referred to as the “Business”). Upon acceptance, this letter will serve as the agreement whereby the Business will participate in an assessment with the *Contractor Name*. This non-regulatory service is provided through the Department of Energy, Labor, and Economic Growth Retired Engineer Technical Assistance Program, which is implemented by *Contractor Name* on behalf of the State of Michigan (the “State”), who funds the program. This assessment will be conducted by a team leader and a RETAP team at no cost to the Business.

The purpose of the assessment is to bring about waste minimization through such means as source reduction, recycling, energy efficiency improvement, treatment, and other applicable methods. Upon completion of this assessment, the Business will be provided a confidential Final Report containing an overall evaluation and recommendations for options to reduce waste generation and improve energy efficiency. The Business is under no obligation under this Agreement to implement any of the options recommended in the assessment. *Contractor Name* fully respects the Business’ interest in retaining the confidentiality of proprietary information.

In consideration of the assessment being conducted and services provided to Business at no cost, it is agreed as follows:

1. The Business hereby releases and discharges all members of the assessment team, *Contractor Name* the State, and their respective agents and employees from and against any claims, actions, causes of action, demands, costs, expenses, losses, liability, compensation, judgments, attorney fees, court costs, damages, interest and other amounts which arise, directly or indirectly, from the services which *Contractor Name* performs for the Business under this Agreement and any verbal or written statements made during or resulting from the assessment and final report.

It is further understood and agreed that the assessment team, *Contractor Name*, the United States, the State, and their respective directors, officers, agents and employees shall have no liability to the Business, its officers, directors, agents, employees, or to any third party for any loss of or injury to earnings, profits, savings, goodwill or reputation, or for any incidental, consequential or special damages, damages to property (both real and personal), and personal injuries, including death, directly or indirectly arising out of or in connection with the services provided under this Agreement, even if *Contractor Name* has been advised of the possibility of such damages occurring before it began its work.

2. It is further understood and agreed that each assessment team member, *Contractor Name*, the State, the United States, and any of their respective agents or employees: (a) make no warranty or representation of any kind whatsoever, either express or implied, as to the accuracy, safety, completeness, usefulness, or reliability of any information, apparatus, product, method, or process discussed in any way in *Contractor Name*’s report; (b) shall have no liability or responsibility to the Business for the use of, or for damages resulting from the use of, any information, apparatus, product, method or process in any way related to the assessment or the final report; (c) make no representation



or warranty, express or implied, that the use of any information, apparatus, product, method, or process in any way related to the report would not infringe privately owned rights; and (d) make no representation or warranty, express or implied, that the implementation of, or reliance upon, the assessment or of the final report will cause the Business to achieve certain results, including cost savings, waste reduction or compliance with legal requirements. The Business further understands and agrees on behalf of itself, its officers, directors, agents, and employees that it is solely responsible for determining the adaptability or suitability of the assessment and final report for its purposes.

- 3. Business agrees to indemnify and hold harmless all assessment team members, *Contractor Name*, the State and their respective officers, directors, agents and employees from any and all claims, suits, actions, liability, costs, demands, injuries, losses, expenses, damages, judgments, attorney fees, court costs, interest and other amounts paid or suffered by any of them which, directly or indirectly, in whole or in part, arise out of or are in any way connected with the services provided by *Contractor Name* under this Agreement or from the use of or reliance upon the assessment or the report produced by *Contractor Name*.
- 4. No member of the Legislature of the State of Michigan, nor any individual employed by the State, nor any agent or employee of *Contractor Name* shall be permitted to share in any benefit that arises from the assessment performed by *Contractor Name*. The Business may not offer or give, directly or indirectly, to any individual employee of the State of Michigan, member of the State Legislature, nor any director, officer, agent or employee of *Contractor Name* any gift, gratuity, favor, entertainment, loan or any other thing of monetary value. Breach of this provision shall constitute a material breach of this Agreement.

If the above correctly reflects the Agreement between *Contractor Name* and the Business, please sign the acceptance below on behalf of the Business in the space provided and return one copy to *Contractor Name* in the enclosed envelope. The original is for your files.

Thank you for your interest and agreement to participate in this worthwhile program.

Very truly yours,

Name
Executive Director, *Contractor Name*

Accepted and agreed to this date: _____

By (Company Representative): _____ Title: _____

Contractor Name Representative: _____