

## MASTER CONTRACT FOR ACCOUNTING AND AUDITING SPB24-0484NH-2

**THIS CONTRACT** is entered into by and between the State of Montana, Department of Administration, State Procurement Services Division, (State), whose address and phone number are PO Box 200135, Helena, MT 59620, 406-444-2575 and Deloitte & Touche LLP, whose address and phone number are 350 N. Last Chance Gulch #301, Helena, MT, 59601, and (916) 288-3117.

### 1. EFFECTIVE DATE, DURATION, AND RENEWAL

**1.1 Contract Term.** The Master Contract's (Contract) initial term is January 1st, 2024, or upon execution, through August 30, 2025, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. Neither the legal counsel signature approving legal content of the Contract nor the procurement officer signature approving the form of the Contract constitutes an authorized signature.

**1.2 Contract Renewal.** State may renew this Contract under its then-existing terms and conditions in two-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of seven years.

### 2. SERVICES

Contractor shall provide State various Accounting, Auditing, or Financial Services as outlined in the SPB-RFP-2023-0484NH Contractor shall maintain necessary certifications outlined and required in SPB-RFP-2023-0484NH.

**2.1 Tier Two Model.** The Contract is a two-tier model. Tier one is the Request for Proposal (RFP), which qualified vendors will be offered in this Contract.

The Tier Two Solicitation Process will be used when an ordering agency has a specific project need. Tier Two Solicitation Process will use a selection process whereby the ordering agency selects a Contractor from the pre-qualified master contract roster for projects through a Statement of Work (SOW). This selection process is required unless a valid business reason is presented to the Department of Administration (DOA) for not using the process. Contractors shall submit project quotes to the ordering agency only – not DOA.

Contractor costs will be required during the Tier Two Solicitation Process. Contractor shall provide a total project cost that will be part of the evaluation criteria for the project. Contractor rates shall not be less than 20% of the total evaluation for selecting a Contractor for a specific Statement of Work Task Order (SOWTO).

**2.2 Issuing of a Statement of Work Task Order.** An ordering agency may select a master contract holder, using the Tier Two Solicitation Process, from the Master Contract-Home page as provided under State's website address:

[https://dataportal.mt.gov/t/DOASFSD/views/StatewideContracts/StatewideContracts?:showAppBanner=false&:display\\_count=n&:showVizHome=n&:origin=viz\\_share\\_link&:embed=y&:tabs=n](https://dataportal.mt.gov/t/DOASFSD/views/StatewideContracts/StatewideContracts?:showAppBanner=false&:display_count=n&:showVizHome=n&:origin=viz_share_link&:embed=y&:tabs=n)

Consideration for Contractor selection will include Contractor's area of expertise; requirements and location of the project; Contractor's availability and access to resources necessary to efficiently and effectively complete the project; demonstrated excellent past performance on state and public projects; staff qualifications; identified subcontractors; and total project cost.

**2.2.1 Selection.** Contractor selection is dependent on the value of each project initiated under the Contract.

**2.2.1.1** For projects with an estimated cost of \$10,000 or less, the ordering agency may select directly any qualified Contractor.

**2.2.1.2** For projects with an estimated cost of between \$10,001 and \$100,000, ordering agency personnel shall solicit responses from at least three qualified contractors before making a selection.

**2.2.1.3** For projects under \$100,000 the categories awarded to Contractor are:

- Category 1: Accounting
- Category 2: Auditing
- Category 3: Other Financial Services

**2.2.1.4** For projects with an anticipated value of over \$100,000, responses must be solicited from all contractors under the Master Contract. The solicitation will include a detailed SOW, along with the project requirements and selection criteria.

**2.2.1.5** Ordering agency personnel shall review and evaluate the responses according to information included in the RFQ and select Contractor with the highest overall rating. Cost may not be the only deciding factor in Contractor selection; however, cost must be at least 20% of the total points considered.

**2.2.1.6** A resume, which emphasizes previous experience in the service category, shall be available for all Contractor's staff. State may request Contractor to provide some or all of the resumes during Tier Two. Failure to provide the resumes or summaries upon request is a breach of the Contract.

**2.2.2 Tier Two Solicitation Process Scoring Framework.** The following categories may be used by the ordering agency to define the selection criteria. The information requested and detail required will depend on the ordering agency's needs, as well as the project's cost, risk, and complexity.

- **Contractor Experience in Providing Services (Company Qualifications)**  
Contractor shall describe its experience and specific skills and expertise in providing the services being sought. This may include number of years providing services, company background information, references, work samples.
- **SOW Understanding and Contractor's Approach/Methodology**  
Contractor shall provide a response stating it has read and understands the SOW and provide information on how it will satisfy the requirements in the SOW. Contractor shall also identify any expected variances between the SOW requirements and how Contractor will complete the project.
- **Project Schedule (May be in SOW)**  
Contractor shall provide a detailed schedule, including start date, milestone completion dates, and a project completion date that will conform to the ordering agency requirements. Contractor may also be required to identify possible schedule issues and how it will address them.
- **Staff and Resources**  
Contractor shall identify the staff and other resources it plans to use to complete the project. The ordering agency will request staff resumes or other supporting documentation for proof of experience.
- **Project Cost (Must be at least 20% of total evaluation points)**  
Contractor shall provide the total project cost, and/or the cost per milestone.
- **Equal Pay for Montana Women (Must be at least 5% of the total evaluation points)**  
Executive Order No. 12-2016 promoting equal pay for Montana women directs the DOA to include incentives in the RFP process for contractors who engage in best practices to

promote wage transparency. Those Offerors who agree to comply will receive all points. Those Offerors who do not agree to comply will receive zero points for this criterion.

Note: ...The ordering agency will determine the weighting factors depending on project/ordering agency needs. Each category may be evaluated using a scoring guide the same or similar to the guide in Evaluation Process document from the RFP. Cost shall be scored by comparing each proposed cost to the lowest cost, unless otherwise stated in the Tier Two Solicitation Process. The lowest cost will receive the maximum points; the higher costs get fewer points based on its relationship to the lowest cost.

**2.2.3 eMACS.** State will utilize eMACS for all Tier Two Solicitation Process selection procedures with a value of greater than \$5,000. It is Contractor's responsibility to maintain its vendor record in eMACS and keep all contact information up-to-date. Ordering agencies are responsible for ensuring compliance and managing the RFQ within eMACS.

**2.2.4 Minimum Documentation.** The ordering agency shall document:

- The Master Contract contractors considered, noting Contractor from which the service was purchased;
- A description of the service purchased;
- The amount paid;
- The evaluation methodology used in selecting the category Contractor to receive the order.
- The rationale for making the selection; and
- Total Cost.

Ordering agency SOWTO will be utilized to finalize the project. Only written addenda will be used for adjustments of the SOWTO and must be signed by both parties. All task orders must contain signatures from both parties and appropriate ordering agency legal review as directed in their procurement policy. A SOWTO is available at <http://emacs.mt.gov/Tier-Two-Procedure>. **PLEASE NOTE:** This is not the only acceptable task order template that may be used under this Contract. Each agency may use the template or one that more specifically fits its business need, provided it includes all required references to the Contract.

**2.3 State Rights.** State may cease negotiations with the chosen contractor if an agreement cannot be reached on project approach and/or costs and begin negotiations with another Contractor from the category list. State shall keep complete written documentation of the negotiations process in the project file. State shall monitor contractor selection by using the information provided in the quarterly Contract usage reports.

Contractors who fail to respond to any RFQ opportunities within a two-year period between July 1<sup>st</sup> and June 30<sup>th</sup> may not be considered for Contract renewal.

## **2.4 Contractor Responsibilities.**

**2.4.1 Supervision and Implementation.** Contractor responsible for an individual project will be responsible for the supervision and implementation of the approach and for oversight of work performed by all subcontractors. In most cases, Contractor shall provide and be responsible for all the necessary equipment, materials, supplies and personnel necessary for proper execution of the work unless otherwise stated in a SOW attached to an RFQ.

**2.4.2 Applicable Laws.** Contractor shall keep informed of, and shall comply with all laws, ordinances, rules, regulations and orders (each, to the extent having the effect of law) of the city, county, state, federal or public bodies having jurisdiction, to the extent applicable to Contractor in its provision of the services required under this Contract. When necessary, based on the funding source, the ordering agency may attach additional federal terms and conditions to an RFQ and SOWTO that are in addition to the terms and conditions of the Contract. These are necessary terms and conditions

tied to the federal funding and any issues with these terms and conditions must be addressed by the ordering agency,

**2.4.3 Work Acceptance.** Contractor shall provide project oversight, if any, as set forth in the SOWTO. State may also periodically provide personnel for administrative oversight from the initiation of the task order through project completion. All work will be inspected by the ordering agency or designated liaison prior to approval of any SOWTO payments. The SOWTO can specify and customize the period of review, correction, rejection, and final acceptance. If no such customized period is specified in the SOWTO, then upon notice from State ordering agency, Contractor shall respond promptly (but in no more than 10 calendar days) and proceed to immediately remedy all defects in a reasonable timeframe (but in no more than 10 additional calendar days). All work rejected as not conforming to the specifications set forth in the SOWTO, shall be corrected prior to final inspection and acceptance as set forth in the SOWTO.

**2.4.4 Records.** With the exception of Section 7 – Access and Retention of Records, Contractor shall supply State and/or ordering agency with documentation, when requested, of methods used throughout the SOWTO project implementation. Contractor shall maintain records for itself and all subcontractors of details in fees (including any billed labor and subcontracting hours expended) and expenses (including supplies, materials, and equipment) incurred in performing the Services under the applicable SOWTO.

**2.4.5 Cooperation.** Contractor shall work closely as required in a SOWTO with State Financial Services Division or Legislative Audit Division to develop the desired products.

**2.4.6 Communication.** Remoteness of project sites may necessitate that Contractor have some form of field communication. This communication is necessary to enable State to respond to public questions or concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. In addition, State or cooperative purchaser may require scheduled communication at agreed upon intervals. The communication schedule will be dependent upon the project circumstances and requirements of the ordering agency. When a communication schedule is included in the SOW, the schedule will commence when Contractor initiates the project.

**2.4.7 Change of Staffing.** Qualifications of Contractor's personnel are key in determining which offerors are selected during Tier Two. Therefore, written notification of any Contractor changes in key personnel must be made to State Procurement Bureau and the ordering agency prior to entering into negotiations to perform any specific work scope or at any time while performing the specific SOW. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to State. If these staffing changes cause Contractor to no longer meet the qualifications stated herein, Contractor will be removed from the pre-qualified list under this Contract. Failure to notify State of staffing changes could result in Contractor being removed from the Contract listing and possible suspension from bidding on other state projects.

**2.4.8 Collaboration.** State encourages collaboration between and among contractors to increase the scope of services offered. In cases where the chosen Contractor is not able to provide all services needed for the project, State will expect the chosen Contractor to contact other contractors on this list to negotiate subcontracts for these services before going elsewhere. Exceptions to this strategy will be evaluated by State on a case-by-case basis.

**2.4.9 Project Budget and Invoicing.** All subcontractors must be approved by the ordering agency. Project budgets will be negotiated for each task order. Contractor shall include subcontractor costs in their proposed project budget to the ordering agency. The order agency shall pay Contractor who, in turn, will be responsible for payments to its subcontractors.

**2.4.10 Meetings.** Contractor may be required to meet with State personnel at the project site to conduct a site evaluation and discuss project issues.

Contractor may also be required to meet with State personnel at the onset of the project and periodically thereafter to resolve technical or contractual problems that may occur during the term of a project. Contractor may be required to attend meetings with other federal and state agencies, and public meetings as directed by State personnel.

Contractor will be given a minimum of three full working days notice of meeting date, time, and location. While face-to-face meetings are desirable, a conference call meeting may be substituted at the discretion of State personnel. Consistent failure to participate in meetings (two consecutive missed or rescheduled meetings) may result in termination of the task order.

**2.5 Subcontractors.** If subcontractors are included in an RFQ, Contractor is the prime Contractor and is responsible, in total, for all work of any subcontractors. State reserves the right to approve all subcontractors. Therefore, any subcontractors must be listed in the proposal and, if a contract is awarded, will be deemed approved by State. Contractor shall notify the ordering agency of any changes to its list of subcontractors and subcontracting work to a subcontractor shall not be allowed until first obtaining approval from the ordering agency.

Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. Further, nothing contained within this Contract or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and State.

If Contractor intends to subcontract services, Contractor shall provide a listing of all subcontractors it intends to use and describe the services they will provide. Contractor shall also provide a listing and description of all pertinent equipment available from each subcontractor. Additionally, Contractor shall describe the subcontractor's pertinent education, training and relevant experience associated with services to be provided.

**2.6 Contractor Reporting Requirement.** Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by State to manage this Contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter: July 1 through September 30  
Second Quarter: October 1 through December 31  
Third Quarter: January 1 through March 31  
Fourth Quarter: April 1 through June 30.

Reports are not required for any quarterly period with no contract activity.

Failure to provide reports in a timely manner may result in suspension from the Contract. Consistent failure to provide reports per this clause may result in termination of Contract.

**2.7 Montana Administrative Fee.** Effective upon execution of a SOWTO issued under this Contract, State assesses an administrative fee of one and one-half percent (1.50%) for all net sales (sales less credits) made under this Contract. The prices paid to Contractor must include the 1.5% Administrative Fee. Contractor shall remit this administrative fee concurrent with the Required Usage Reporting described above. The administrative fee must be submitted by ACH along with email notification to the CO.

### **3. WARRANTIES**

**3.1 Warranty of Services.** Contractor warrants that the services provided conform to the description of such services set forth in the applicable SOWTO and shall be performed in good faith and in a professional manner. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

PURPOSE. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. In the event Contractor fails to cure within a reasonable period, State may either (i) elect to receive a refund or credit of the professional fees paid to Contractor under the applicable SOW with respect to the services giving rise to such breach and such refund shall be State's sole and exclusive remedy, and Contractor's sole and exclusive obligation for such breach; or (ii) exercise any other rights or remedies available to State under this Contract or such SOW, whether at law or in equity. Services corrected by Contractor are subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

#### **4. CONSIDERATION/PAYMENT**

**4.1 Payment Schedule.** In consideration for the services to be provided, State shall pay according to the negotiated agreement for each SOWTO. When itemized cost proposals are allowed for in Tier Two, all travel will be in accordance with the State Travel Policy. Mileage (low rate), lodging and meals will be reimbursed at the current State rates per the State Travel Policy. <http://doa.mt.gov/employee-travel>

**4.2 Withholding of Payment.** In addition to its other remedies under this Contract, at law, or in equity, State may withhold such payment to Contractor if Contractor has breached this Contract pending resolution of any dispute related to such breach, upon notification to Contractor prior to the due date for the payment of the related invoiced, reasonably describing the basis of such dispute. Such withholding may not be greater than, in the aggregate, 15% of the total value of the subject SOWTO or applicable contract.

**4.3 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. With the exception of 4.2 – Withholding of Payment, if payment is not received within such period, Contractor may suspend or terminate the services upon thirty days written notice to State. Contractor shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.

**4.4 Reference to Contract.** The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to pay the invoice.

#### **5. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with State. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to State Procurement Bureau prior to the award of this Contract, the prices, terms, and conditions of this Contract will be offered to these public procurement units. However, State Procurement Bureau makes no guarantee of any public procurement unit participation in this Contract.

#### **6. NON-EXCLUSIVE CONTRACT**

The intent of this Contract is to provide state agencies with an expedited means of procuring supplies and/or services. This Contract is for the convenience of state agencies and is considered by State to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the Contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. State does not guarantee any usage.

#### **7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** Contractor shall provide State, Legislative Auditor, or their authorized agents access to sufficient records necessary to determine Contract compliance. State may terminate this



Contract under Section 18 - Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this Section. (18-1-118, MCA.)

**7.2 Retention Period.** Contractor shall create and retain all records supporting the Contract for Auditing, Accounting, or Financial Services for a period of eight years after either the completion date of this Contract or termination of the Contract.

## **8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA.) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

## **9. HOLD HARMLESS/INDEMNIFICATION**

**9.1 General Indemnification.** Contractor agrees to protect, defend, and save State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this contract.

**9.2 Additional Indemnification.** Claims under this provision include Claims arising out of Contractor's breach of Section 13 or Section 14 of this Contract, Claims asserting that any of Contractor's employees are employees or common law employees of State or any of its agencies, including, but not limited to, excise taxes or penalties imposed on State under Internal Revenue Code ("Code") Sections 4980H, 6055 or 6056, and Claims brought by Contractor personnel for any health care or other employment-related benefits or coverage.

## **10. REQUIRED INSURANCE**

**10.1 General Requirements.** Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**10.2 Primary Insurance.** Contractor's insurance coverage specific to State's additional insured status, shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**10.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal and advertising injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by an act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products, and completed operations; and the premises owned, leased, occupied, or used.

**10.4 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per claim and \$2,000,000 aggregate per year to cover such claims as may be caused by an act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or legal liability for subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy subject to continued commercial availability.

**10.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention are the responsibility of the Contractor.

**10.6 Certificate of Insurance/Endorsements.** An ACORD-certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of blanket additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State promptly (but no more than 3 business days) of any adverse material change in insurance coverage, such as changes in limits, coverages, change in status of policy unless replacement coverage meeting the terms and conditions hereunder are obtained without lapse.

## **11. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **12. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this Contract, fully comply with all federal, state, or local laws, rules, regulations, and executive orders applicable to it in its performance of the services including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

Nondiscrimination Against Firearms Entities/Trade Associations. Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This Section shall be construed in accordance with 30-20-301, MCA.

## **13. DISABILITY ACCOMMODATIONS**

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to



make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

#### **14. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED**

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

#### **15. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

#### **16. INTELLECTUAL PROPERTY/OWNERSHIP**

**16.1 Title and Ownership Rights.** State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), and grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable SOW.

**16.2 Ownership of Work Product.** Upon full payment for the applicable Work Product, Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product other than Contractor Pre-Existing Materials.

**16.3 Copy of Work Product.** Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination, provided that any work-in-progress shall be provided on an as-is basis, without warranty or indemnity of any kind.

**16.4 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and created or employed by Contractor in connection with the services provided to State, plus any modifications or enhancements thereto and derivative works based thereon (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Upon full payment for the applicable Work Product, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 16.2 - Ownership of Work Product, or as may be expressly agreed in any SOW, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

## **17. PATENT AND COPYRIGHT PROTECTION**

**17.1 Third-Party Claim.** If a third party makes a claim against State that the Work Products furnished under this Contract infringe upon or violate any patent or copyright, State shall promptly notify Contractor. Contractor shall defend such claim in State's name or its own name, as appropriate, but at Contractor's expense and shall indemnify State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim, except to the extent that such infringement or unauthorized use arises from (i) modification of the Work Product other than by Contractor or its subcontractors, or use thereof in a manner not contemplated by the applicable SOW, (ii) the failure of State to use any corrections or modifications made available and provided by Contractor, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of State, or (iv) the use of the Work Product in combination with any platform, product, network or data not provided by Contractor. If State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**17.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by State shall be prevented by injunction, Based on the claim for infringement, either party may require State to cease use of such Work Product and Contractor shall refund the professional fees paid to Contractor with respect to the Services giving rise to such Work Product..

## **18. CONTRACT TERMINATION**

**18.1 Termination for Cause with Notice to Cure Requirement.** State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**18.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**18.3 Reduction of Funding.** State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through State's budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **19. EVENT OF BREACH – REMEDIES**

**19.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions may constitute an event of material breach under this Contract:

- Work Products or services furnished fail to conform to any requirement set forth in the SOWTO;

- Failure to submit any report required by this Contract Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching Section 24.1 - Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

**19.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**19.3 Actions in Event of Breach.** Upon Contractor's material breach, State may:

- Terminate this Contract under Section 18.1, Termination for Cause with Notice to Cure and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under Section 18.2 - Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

## **20. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **21. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **22. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Work Product or services provided that do not conform to the specifications set forth in the SOWTO may be rejected and returned at Contractor's expense.

## **23. LIAISONS AND SERVICE OF NOTICES**

**23.1 Contract Manager.** State's Contract Manager identified below is State's single point of contact and shall perform all contract management under 2-17-512, MCA, on State's behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State's Contract Manager.

Nolan Harris is State's Contract Manager  
125 North Roberts St., Room 165  
Helena, MT 59601  
406-444-7210  
Cooppurchasing@mt.gov

Will Carroll is Contractor's Contract Manager  
350 N. Last Chance Gulch Suite 300  
Helena MT 59601  
617-504-9674  
[wcarroll@deloitte.com](mailto:wcarroll@deloitte.com)

**23.2 Notifications.** State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or email. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing.

## **24. MEETINGS**

**24.1 Technical or Contractual Problems.** Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

**24.2 Progress Meetings.** During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**24.3 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**24.4 State's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **25. TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

**26. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

**27. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

**28. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by Contractor.

**29. AUTHORITY**

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**30. SEVERABILITY**

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

**31. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**31.1 Contract.** This Contract consists of XX numbered pages, any Attachments as required, Solicitation # SPB-RFP-2023-0484NH, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**31.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**32. WAIVER**

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**33. Limitation of Liability** Each party to a SOWTO, its affiliates and subcontractors, and their respective personnel shall not be liable to the other party for any claims, liabilities, or expenses relating to or in connection

with this Contract or such SOWTO ("Claims") for an aggregate amount in excess of two times the Contract's total value or \$2,000,000, whichever is greater, except (i) to the extent resulting from the other party's recklessness, bad faith or intentional misconduct; or (ii) for payment for services performed. In no event shall a party to a SOWTO, its affiliates or subcontractors, or their respective personnel be liable to the other party for any loss of use, goodwill, revenues, or profits.

**34. EXECUTION**


The parties through their authorized agents have executed this Contract on the dates set out below.

**STATE OF MONTANA**  
**Department of Administration**  
**PO Box 200135**  
**Helena, MT 59620**

**Deloitte & Touche LLP**  
**350 N. Last Chance Gulch #301**  
**Helena, MT 59601**  
**FEDERAL ID # 061454513**

BY: John Thomas, Administrator  
(Name/Title)

BY: William Carroll Principal  
(Name/Title)


DocuSigned by:  
  
4923FE7749004B0...  
(Signature)

DocuSigned by:  
  
64C88B302826408...  
(Signature)


DATE: 6/10/2024

DATE: 6/4/2024

Approved as to Legal Content:


DocuSigned by:  
 6/4/2024  
3C947270DF0E49A...  
Legal Counsel (Date)

Approved as to Form:

DocuSigned by:  
 6/4/2024  
B31000F051454E1...  
Procurement Officer (Date)  
State Procurement Services Division

Chief Information Officer Approval:

Contractor is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

DocuSigned by:  
 6/4/2024  
2D9001032F48415...  
Chief Information Officer (Date)  
Department of Administration  
ITPR\_10157\_202371295422

## **Attachment A**

### **Federal Terms and Conditions (Non-Construction)**

#### **1. NONDISCRIMINATION**

Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly, and to the extent applicable, Contractor agrees to comply with the following:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.

c. 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 DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, 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 DoD regulations at 32 CFR part 56.

#### **2. LOBBYING**

a. Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

#### **3. DRUG-FREE WORK PLACE**

Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

#### **4. ENVIRONMENTAL PROTECTION**

a. Contractor agrees that its performance under this contract shall comply with:

(1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);

(2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;

(3) The Resources Conservation and Recovery Act (RCRA);

(4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);

(5) The National Environmental Policy Act (NEPA);

(6) The Solid Waste Disposal Act (SWDA);

(7) The 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 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;

(8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.



b. In accordance with the EPA rules, the parties further agree that Contractor shall also identify to State any impact this contract may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency 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.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.). Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

## **5. USE OF UNITED STATES FLAG VESSELS**

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers ( air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

## **6. DEBARMENT AND SUSPENSION**

a. Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in Contractor's contract files, and shall be subject to audit by federal/State audit agencies

Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

## **7. BUY AMERICAN ACT**

Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

## **8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES**

Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of 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.

## **9. COPELAND "ANTI-KICKBACK" ACT**

Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

## **10. CONTRACT WORK HOURS AND SAFETY STANDARDS**

Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

## **11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## **12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED**

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

## **14. PROCUREMENT OF RECOVERED MATERIALS**

Contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.