

STATE OF MAINE
Risk Management Division



85 State House Station
Augusta, ME 04333-0085

ACTUARIAL SERVICES
2004
Request for Proposal

ACTUARIAL SERVICES 2004 Request for Proposal

The State of Maine through Risk Management Division is seeking sealed proposals for the furnishing of all qualified personnel, facilities, materials and services (supplemented only by State of Maine records) to conduct biennial actuarial examinations, the first year ending March 31, 2004 and the second year ending March 31, 2006 on the operations of the State's Risk Management Division.

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KEY EVENTS/DATES

DATE	TIME	EVENT
January 26, 2004	n/a	Request for Proposal (RFP) release
February 17, 2004	2:00 P.M.	Closing date for inquiries
March 2, 2004	2:00 P.M.	Proposal submission due in Augusta, Maine
April 15, 2004 - 2008	n/a	Contract Period

PROPOSAL SUBMISSION REQUIREMENTS

Proposals will be accepted in accordance with the requirements described below.

1. All proposals must be typewritten. Changes or corrections must be initialed.
2. Each proposal must include a completed Bidder Questionnaire (page 10) and Proposal Submission Cost Computation form (page 11) that must be signed by a person legally authorized to bind the bidder.
3. Bidders should direct **written** questions regarding the proposal to:

David A. Fitts, Director
Maine Risk Management Division
85 State House Station
Augusta, ME 04333-0085
E-mail: David.A.Fitts@Maine.gov

A written response will be provided. Phone calls will not be accepted. Questions received on or after Tuesday, February 17, 2004 at 2:00 P.M. local time will not be responded to. Bidders are not to contact any other state agency directly. All contact is to be directed to Risk Management Division.

4. Three copies of each proposal must be submitted in a sealed package/envelope clearly marked "**State of Maine Actuarial Proposal**" by 2:00 P.M. local time on Tuesday, March 2, 2004 to:

Maine Division of Purchases
Burton M. Cross Building, 4th Floor
9 State House Station
Augusta, ME 04333-0009

Proposals will be publicly opened at the date, time, and place specified above. All proposals received after the above date and time will not be considered and will be returned unopened. Proposals will not be available for inspection until after the bid has been awarded.

5. The State will not accept responsibility for any costs incurred by a bidder in the preparation of their proposal.
6. Failure of the bidder to provide any information requested may result in disqualification of the proposal.
7. The State reserves the right to reject any and all proposals in their entirety.
8. The State reserves the option to require a personal interview as part of the evaluation process.
9. All bidders will be notified in writing of the award decision as soon as that decision is made.
10. The successful bidder will be required to execute a State of Maine Agreement to Purchase Services, a copy of which can be found beginning on page 12.
11. Content of all proposals become public at award notification.

PROPOSAL EVALUATION

An evaluation team will judge the merits of proposals meeting the submission requirements. Officials responsible for the evaluation and selection of a Provider shall ensure that the selection process affords equal opportunity and appropriate consideration to all who are capable of meeting the work specifications.

Specific Criteria

A comparative scoring system will measure the degree to which each proposal meets the following three criteria. Bidder should carefully note the information to be supplied to the State for this purpose.

1. **Weight 40%**
Qualifications and experience of both the firm and the key personnel to be involved. The information provided on the required Bidder Questionnaire including references (see page 10) will be utilized to score this criteria. All actuarial personnel assigned to the Work - other than clerical assistants - must be members in good standing of the Casualty Actuarial Society.
2. **Weight 30%**
Problem Understanding. The bidder will be provided with a synopsis of the current programs and pertinent information regarding the operation of the divisions. The bidder must display an understanding of any issues disclosed in this information. The bidder shall provide a detailed list of the data it will need from Risk Management Division to accomplish the work.
3. **Weight 30%**
Proposed cost. In addition to completion of the Proposal Submission Cost Computation Form (page 11), the bidder must provide a detailed cost schedule showing the name of each person who will work on this contract, their estimated hours of work, wage rate per hour and total fixed cost. The total fixed cost of the work as denoted on the Proposal Submission Cost Computation Form must be all inclusive and include such things as the expected amount of out of pocket expenses, etc.

RIDER A – Specifications of Services to be Provided

1. The Provider shall furnish all personnel, facilities, materials, supplies and other necessary items to facilitate the work, excepting copies of pertinent records from Risk Management Division that will be furnished to the Provider, and shall perform all of the work set out and described in the following sections.
2. The Provider shall perform a biennial comprehensive analysis of the loss and loss adjustment expenses of the Risk Management Division as of March 31, 2004 and as of March 31, 2006 in order to:
 - a. **Estimate Outstanding Losses** including allocated loss adjustment expenses (ALAE) as of March 31st. This estimate shall include a breakdown by line of insurance and by fund (see page six) as well as a combined estimate. Estimated outstanding losses shall include case reserves, the development of known claims, and incurred but not reported (IBNR) claims. The estimate of outstanding losses shall reflect any excess insurance maintained by the State and shall be shown on a full value basis (not discounted) and a present value basis (discounted for future investment earnings); and
 - b. **Project the Financial Condition.** Provide a statement of the projected financial condition as of March 31st by comparing the estimated outstanding losses with assets (approximate and unaudited) earmarked to meet them. This projection shall include a breakdown by fund as well as a combined projection; and
 - c. **Project Ultimate Limited Losses** (including ALAE) for 2006/2007 and then for 2008/2009. Project the accrual value of losses with accident dates in 2006/2007 and then 2008/2009, regardless of report or payment date. This shall reflect any excess insurance maintained by the State and shall be shown on a full value basis and a present value basis. This estimate shall include a breakdown by line of insurance and by fund as well as a combined estimate; and
 - d. **Recommend Funding** based on the soundness of the projected financial condition, projected ultimate limited losses and projected expenses for excess insurance and administration. This recommendation shall include a breakdown by program line of insurance and by fund as well as a combined recommendation.
 - e. **Affirm GASB Statement No. 10 Compliance.** Provide a statement affirming the conclusions in the actuarial study are consistent with GASB Statement No. 10.
3. **Reports.** Biennially, the Provider shall prepare and render a written draft report to be followed by a formal, final report to Risk Management Division setting out the following information:
 - i. A summary of findings; and
 - ii. An opinion on the adequacy of reserves to cover the estimated ultimate liability; and
 - iii. An analysis of the methodology employed by the Provider in evaluating and estimating rendering this summary; and
 - iv. Exhibits and loss triangles, which support the Provider's estimates.

If reports are not received on time, the report becomes worthless for budget purposes. Thus for clarification, these are the report due dates to which the Provider will be held:

For biennial review as of	Draft report is due by:	Final report is due by:
March 31, 2004	June 1, 2004	June 15, 2004
March 31, 2006	June 1, 2006	June 15, 2006

4. **Testimony.** The Provider shall be prepared, willing and able to provide testimony and respond to questions on the actuarial findings before the legislature of the State of Maine and other State officials as requested. Projected expenses for such testimony, if any, must be included in the designated section of the Costs Computation Form (see page 11). It shall not be included in the costs denoted for Rider A.

OVERVIEW – RISK MANAGEMENT DIVISION

OVERVIEW OF PURPOSE AND FUNCTION

Risk Management Division (RMD) provides insurance advice and services to State government and designated quasi-state entities. With the exception of workers' compensation and health insurance, RMD administers all insurance and self-insurance plans and programs for State government. The division derives its authority from 5 MRSA, §1728-A to 1736. [1]

SELF-INSURANCE RESERVE FUNDS

This same statute establishes two self-insurance funds. The first is called the Self-insurance Fund and is a program for State agencies. The second is called the State Administered Fund and is a program for quasi-state agencies such as the University of Maine, Maine Technical College System, the Foster Parent program and others. The two funds are maintained separately for accounting purposes and are the subject of this actuarial request for proposal.

MAINE TORT CLAIMS ACT

The Maine Tort Claims Act (14 MRSA, §8101 - 8118) provides immunity from suit for governmental entities except as expressly provided by the statute. When immunity is removed, any claim for damages must be brought in accordance with the terms of the statute. The statute also establishes a limitation on damages. Our self-insurance liability programs are built around this statute.

LAST ACTUARIAL REPORT

The last actuarial examination was completed for the period ending June 30, 2003.

LINES OF INSURANCE

For the purposes of this actuarial study, there are five groupings:

Group	Includes	Excess Insurance
General Liability	Tort, civil rights, employment practices, police professional and foster parents' liability	No
Vehicle Liability		Yes
Property	Property and boiler	Yes
Employee Bonding		No
Other	Aviation, inland marine, ocean marine	Yes, for aviation and ocean marine only.

[1] All statutes referred to in this document can be accessed via <http://janus.state.me.us/legis/statutes/search.asp>

**EXCESS
INSURANCE**

For the lines indicated, excess commercial insurance is maintained at the following levels:

Vehicle Liability. For claims occurring in Maine, there is no excess insurance. For claims occurring outside of Maine, an extraterritorial liability policy is maintained with a \$400,000 SIR and a \$600,000 limit.

Property. Commercial policy deductible is two million dollars per occurrence; Annual aggregate deductible is four million dollars after which a \$100,000 deductible per occurrence applies. There is no excess for the boiler explosion peril.

Other -Aviation. First dollar commercial insurance for liability. No commercial insurance is maintained for hull.

Ocean Marine Commercial policy deductibles per occurrence are \$10,000 for liability and \$100,000 for hull per occurrence, generally.

**CURRENT
EXPOSURES**

Line of Insurance	Self-Insured Fund	State Administered Fund
Aviation	15 planes	None
Boiler	246 boilers 144 pressure vessels	413 boilers 85 pressure vessels
Employee bonding	14,203 employees	3,478 employees
Employment practices liability	14,203 employees	3,478 employees
Foster Parents Liability	None	3,075 foster children
Ocean Marine	95 vessels	111 vessels
Police professional liability	399 officers	None
Property	\$1,142,395,688 RC Building & Contents	\$1,993,331,099 RC Building & Contents
Tort and civil rights liability	9,446 employees	3,478 employees
Vehicles	4,911 vehicles	201 vehicles

**CURRENT
MANAGEMENT**

The current management of RMD, in place since 1992, draws on years of experience in the insurance industry to manage the State of Maine’s risk management needs.

Director: David A. Fitts

David joined Risk Management Division in 1988 as a risk assessor and was promoted to director in 1992. He graduated from the University of Maine - Farmington in 1977 with a Bachelor in Science degree. David began his insurance career in 1981 with Mid-State Adjustment and has over 20 years experience in the claims and loss control fields as a licensed adjuster.

Risk Assessor: Patricia P. Hayden, CPCU, ARM, AU

Prior to joining Risk Management Division in 1990, Patti was a property and casualty underwriting manager with AIG, where she also taught IIA courses for company personnel. She began her insurance career in 1980 at the agency level, first as a customer service representative and then as a licensed producing agent, all lines.

Case Manager: Patricia Gosline, ARM

Tricia joined Risk Management Division in 1992. As case manager, Tricia received and assigns claims, investigates claims, reviews and analyses claims data, negotiates and authorizes settlements, coordinates legal counsel services and contracts with outside vendors.

ADDITIONAL SUPPORT

The management team is supported by one additional professional staff and one clerical support employee. In addition, we have available the resources of other State agencies such as a dedicated boiler inspector, the Bureau of Labor Standards and their Safety Division, the State Fire Marshal's Office, and the engineering expertise of the Bureau of General Services.

INSURANCE ADMINISTRATION

The Director and Risk Assessor use sound underwriting practices to analyze exposure to loss, provide proper insurance coverage, maintain appropriate pricing and administer the insurance program. Each separate policy is contained in a policy file along with endorsements, underwriting notes, rating methodology and billing. Prior to each policy renewal, losses are analyzed for continued insurability, loss control and rating purposes. A diary system is maintained. State agencies are assisted with certificates of insurance, contractual insurance clauses and exposure identification. Every three to five years, each large commercial policy is put out to bid to secure the best coverage terms and pricing for the State.

CLAIMS PROCESSING

Procedures are in place for the reporting of all claims or potential claims by participating agencies. Prompt reporting is essential to allow RMD to meet its service standards.

Claim Assignment: Each claim is immediately assigned to one of four professional staff by the Case Manager the same day it is received. The assigned adjuster reviews the provided claim information, determines the existence of insurance for the loss, sets a reserve, and sets in motion the investigation.

Files: A file is established for each claim and a claim number assigned. The claim information is added to the database by support staff within 24 hours of receipt of the claim.

Investigation and Settlement: Outside resources may be utilized in the adjustment of a claim. These resources may include independent adjusting and appraisal services.

Diary System: Files are set on a strict diary system. On a weekly basis, a diary report is pulled..

Payment of Claims: All claims are evaluated within RMD for resolution and settlement purposes. Payment authorities have been established as part of the State's accounting system. Claim payments in excess of \$25,000 require the Director's signature as well as that of a higher authority.

Service Standards: Standards are set forth in a written document, and every effort is made to provide just, prompt, and courteous claim service.

Claims Report to Insurers:

Property: Our arrangement with the current agent and insurer calls for quarterly claims reports to be provided by RMD.

Ocean Marine: Our arrangement with the current agent and insurer calls for quarterly claims reports to be provided by RMD.

LOSS PREVENTION By statute, RMD is authorized to expend up to five percent of the self insurance fund balances for loss prevention programs each fiscal year. An average of 29 grants are issued per year. In the past ten years, over \$947,000 in loss prevention funds were distributed. We feel that the existence and innovative use of this program allows the state to take positive action when a loss control need is identified. Grants are issued for fire safety equipment, life safety equipment, and to meet training needs. Through this fund, Risk Management Division currently offers a certified defensive driving program to State employees.

SYSTEM SUPPORT Since 1988, RMD has utilized a risk information management system developed by and for Risk Management. This system is utilized for insurance policy management, billing, claims management and trending and has proven to be a real asset to management. It allows the extraction of claims data and property data in any desired format.

BIDDER QUESTIONNAIRE

General Information about your Firm

Firm's Name: _____

Mailing Address: _____

Telephone: _____ Fax: _____ Email: _____

Name of Contact Person for this proposal: _____

Total number of years in business: _____ Number of personnel in your firm: _____

Of this total number, what percentage holds the designation FCAS (Fellow of the Casualty Actuarial Society)?

_____ Other designations: _____

What percentage of additional employees are actively working towards the designation? _____

Of your total book of business, what percentage is work for:

State government? _____ Other public entities? _____ Self insured property & casualty pools? _____

Self insured workers compensation programs? _____ Retiree Health programs? _____

Insurance companies? _____

Have you previously done similar work for State of Maine government? (*If so, please specify nature and time frame*): _____

What percentage of your clients are repeat clients? _____ For repeat clients, have you experienced any general patterns in terms of whether your prior estimates have proven to be too high, too low or randomly high or low? _____

Servicing Office (This refers to the office that will service this specific contract.)

Mailing Address: _____

Physical Location: _____

Telephone: _____ Fax: _____ E-mail: _____

Servicing Personnel (This refers to the personnel who will service this specific contract.)

Name of contract manager: _____

What percentage of our work will be done by the contract manager? _____

Please attach a brief resume for each person who will work on this contract.

As a minimum, please be sure the following information is included:

- Name and position
- Length of time in actuarial business
- Length of time in this firm
- Membership in professional organizations
- Professional designations held
- Nature of their work on this contract
- Experience with state governmental entities
- Experience with self-insurance property and casualty pools

References

We desire to check your references with the last five firms for whom you have completed an actuarial engagement of the type that is comparable to this project. Please provide information on these firms as follows: the firm's name, name and telephone number of a contact person, nature of your work for them and approximate duration of work.

STATE CONTRACT

Agreement Number: TBD
DEPARTMENT OF Administrative and Financial Services
Agreement to Purchase Services

THIS AGREEMENT is made this __ day of __, 2004, by and between the State of Maine, Department of Administrative & Financial Services, hereinafter called "Department", and (Provider Name), located at (Mailing Address), (City), Maine (Zip), telephone number -, hereinafter called "Provider", for the period of April 15, 2004 to April 15, 2008.

The Employer Identification Number of the Provider is _____.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and furnished by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and, in consultation with the Department, perform the services, study or projects described in Rider A and under the terms within this Agreement. The following Riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Services to be Provided
- Rider B - Method of Payment and Other Provisions.

IN WITNESS WHEREOF, the Department and Provider, by their duly authorized representatives, have executed this Agreement in six originals as of the day and year first above written.

DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES

By: _____
David A. Fitts, Director, Risk Management Division

By: _____
Ryan Low, Director, Division of Financial & Personnel Services
and

PROVIDER NAME

By: _____
Name & Title, Provider Representative

Total Agreement Amount: \$.00

Approved: _____ State Controller
Chair, State Purchases Review Committee

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1. AGREEMENT AMOUNT \$.00

2. INVOICES AND PAYMENTS _____ The Department will pay the provider as follows:

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. BENEFITS AND DEDUCTIONS _____ If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. INDEPENDENT CAPACITY _____ In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. DEPARTMENT'S REPRESENTATIVE _____ The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. AGREEMENT ADMINISTRATOR _____ All progress reports, correspondence and related submissions from the Provider shall be submitted to:

David A. Fitts, Director
Risk Management Division
85 State House Station
Augusta, ME 04333-0085
Telephone: (207) 624-7423

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. CHANGES IN THE WORK _____ The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or physical or mental disability.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the

best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a professional liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.