

# AGRICULTURAL CHEMICALS AND RELATED SERVICES

## SPB-2016-0032J-B

**THIS CONTRACT** is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (State), whose address and phone number are PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and Helena Chemical Company, (Contractor), whose address and phone number are 10 5th Avenue South, Laurel MT 59044 and (406) 855-5855.

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

**1.1 Contract Term.** The contract's initial term is April 1, 2016, (or upon contract execution), through December 31, 2016, 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. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

**1.2 Contract Renewal.** State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to State. This contract, including any renewals, may not exceed a total of seven years.

### 2. COST ADJUSTMENTS

**2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs.** *After the contract's initial term and if State agrees to a renewal*, the parties may negotiate cost adjustments at the time of contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

**2.2 Price Reductions.** Price reductions shall be accepted annually. Reduction information shall be submitted to the State no later than January 15 of each contract year. Contractor shall reduce the contract price of any product initially provided or added by at least the same percentage as any manufacturer or distributor's dealer price reduction. The intent of this requirement is to ensure that the State maintains a competitive price relative to the market price throughout the term of the contract, thereby ensuring utilization of this contract for the benefit of both State and Contractor.

All price reductions shall be sent to the State Procurement Bureau and the MDT contract administrator.

### 3. SERVICES AND/OR SUPPLIES

Contractor shall provide State with agricultural chemicals and related services to be used by state agencies and public procurement units throughout the state. Contractor shall have adequate facilities, equipment, personnel, and experience to execute the requirements of this contract.

In addition to providing the chemical products listed in Attachment C – Chemicals, Contractor shall provide the related services described in Section 3.9 Contractor Support/Related Services of this contract. With substantial liability and environmental concerns involved when applying herbicides, it is imperative that Contractor and all staff working have extensive knowledge of relevant equipment, policies, procedures, and strategies and have the ability to develop close, hands-on working relationships with each contract user.

Agricultural chemicals supplied must comply with all rules and regulations applying to the sale of agricultural chemicals in the State of Montana.

**3.1 Contract Usage.** While this term contract shall be available for use by all state agencies and public procurement units, the State's Department of Transportation (MDT) is the PRIMARY user. Throughout various sections, contract requirements are listed for both general and MDT use. Where no breakout of requirements is noted, those requirements shall be applicable for both general and MDT use.

### **3.2 Delivery Requirements.**

**3.2.1 Guaranteed Delivery.** Chemical deliveries must be guaranteed to be completed within 3-5 business days after Contractor receives the order. Failure to meet this delivery schedule may result in cancellation of the order; consistent failure to meet this delivery schedule may result in contract termination.

If Contractor is unable to meet the delivery schedule as noted above, contract user must be notified immediately. An alternate delivery schedule may be mutually agreed upon. Contract users requesting an alternate, expedited delivery schedule must be contacted if the alternate schedule cannot be met. If an alternative delivery schedule cannot be negotiated, the order may be cancelled at no cost to the contract user.

**3.2.2 Rush/Emergency Orders.** Rush or emergency orders are those orders needing to be delivered as soon as possible. When a contract user requests an order to be RUSH or EMERGENCY, all prepaid transportation charges will be documented, invoiced and are payable by that contract user.

**3.2.3 Shipping.** Weekends and holidays excepted, deliveries shall be **F.O.B. DESTINATION within the State's premises.** The term "F.O.B. destination, within the State's premises," as used in this clause, means free of expense to the State and delivered to the location specified. Contractor shall:

- pack and mark the shipment to comply with specifications; or, if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner as to ensure delivery in good condition;
- prepare and distribute commercial bills of lading and Material Safety Data Sheets (MSDS) as appropriate. Contractor shall provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous chemical to the contract user. All safety data sheets and labels shall be in accordance with the Occupational Safety and Health Administration, Department of Labor's occupational and Safety Standards, 29 CFR 1910, the Employee and Community Hazardous Chemical Information Act, sections 50-78-101 through 50-78-4032, Montana Code Annotated;
- deliver the shipment in good order and condition to the point of delivery specified by the contract user; be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the contract user at the delivery point specified. Lost and/or damaged goods must be replaced by Contractor, at no cost to the contract user, within seven days of notification;
- furnish a delivery schedule and designate the mode of delivering carrier; and
- pay and bear all charges to the specified points of delivery.

**3.2.4 COD Shipments.** No COD shipments will be accepted.

**3.2.5 Minimum Orders.** The minimum order for prepaid shipment to contract users throughout the state of Montana is \$100. Orders of \$100 or more will be shipped F.O.B. destination. No additional freight charges are allowed. The minimum order requirement includes backorders shipped at a later time.

If Contractor cannot meet orders due to backorder issues and/or assesses freight charges when shipping backorders may have the contract terminated.

Orders of less than \$100 shall be shipped via the best and least expensive way, within the allotted delivery time frame. Actual shipping charges are to be added to the invoice as a separate line item. No additional charges are allowed.

**3.2.6 Alternative Shipping Methods.** There are many new methods of delivery of herbicides that increase safety, reduce handling, and minimize environmental impact. Contractor must be knowledgeable of and be able to accommodate alternative delivery methods such as pre-mixed combinations when requested by contract users.

**3.3 Product Add-On/Deletion Procedure.** New products may be added throughout the contract term as long as they are within the intent of the contract. Obsolete, discontinued, or products no longer required by State may be removed throughout the term of the contract as well.

To request new products be added to or remove current products from the contract, contract users must send a letter listing the product(s) to be added or removed and applicable new product specification/performance information to State. State will work in conjunction with MDT contract administrator to approve/deny such requests.

**Department of Transportation.** All MDT contract users must send requests for new products or removal of current products to MDT's contract administrator. MDT contract administrator will approve/deny such requests. All requests approved by MDT contract administrator must be provided to the State.

**3.4 Substitutions.** Contractor may not substitute items ordered regardless if the substituted items may be similar, are proprietary to their company or for any other reasons, without prior documented authorization from the contract user. Substitutions MUST meet all original specifications. Substitution items received that have not been authorized prior to shipping shall be returned at Contractor's expense.

Contractor shall prove equal quality or proper substitution of any alternative products offered by furnishing detailed specifications and, if necessary, a sample of the product for evaluation to the contract user.

**Department of Transportation.** Contractors shall obtain MDT contract administrator's written approval of proposed substituted products prior to shipping.

**3.5 Shelf-Life.** Any products offered with an applicable shelf life must be date-stamped. Dated products must have an average or normal shelf life expectancy of at least one year. Materials with more than one year dating shall be returned at Contractor's expense.

**3.6 Returned Goods Policy.** Contractor shall have a returned goods policy that details authorization procedures for return of unopened containers, damaged goods, unauthorized substitutions, etc. Authorized return of goods **will not** be subject to any re-stocking fees. See Contractor's returned goods policy in Attachment A – Returned Goods Policy.

**3.7 Ordering.** Contract users shall order directly from Contractor using any of the following ordering methods. State reserves the right to change these ordering methods as needed. Orders shall be placed during normal weekday working hours:

- toll-free telephone or fax. If contract users order by telephone, they must provide a mailed or faxed purchase order or other appropriate order document to Contractor; or
- mail or e-mail/website.

The term contract number must appear on all orders. Contractor's ordering information can be found in Attachment B – Ordering Information.

**Department of Transportation.** When filling orders for MDT contract users, Contractor shall provide a copy to of each packing slip to MDT's contract administrator.

### **3.8 Invoicing/Payments/Accounts.**

**3.8.1 Invoicing/Payments.** Contractor shall submit an original and two copies of each invoice directly to each individual contract user. Contract users shall pay within 30 days of receipt of a properly executed invoice. The term contract number must appear on all invoices, shipping and packing labels, and correspondence.

**Department of Transportation.** Contractor shall provide a copy of each MDT order invoice to MDT's contract administrator in addition to the original and copies sent to MDT contract user as noted above.

**3.8.2 Accounts.** Contractor shall establish accounts for each user agency.

### **3.9 Contractor Support/Related Services.**

**3.9.1** While many herbicides may work, knowledge of, experience with, and comfort level are critical for proper application and effectiveness. Lack of these greatly increases the possibility of over or under application which could lead to effectiveness concerns as well as increased liability and environmental concerns.

Contractor shall be available to provide contract users with guidance and advice regarding chemical usages to ensure proper and efficient application when using the chemical products provided in the contract. Contractor shall provide when needed or requested, at no additional cost, support to contract users; which may include but not be limited to the following:

- advice and sufficient technical assistance,
- knowledgeable recommendations;
- notification of changing prices and potential chemical shortages; and
- use and safety information.

**Department of Transportation.** As primary user of this contract, MDT requires Contractor develop a hands-on relationship with MDT users which would include but not be limited to face-to-face interaction and training attendance. Contractor shall provide the following mandatory contractor support for MDT at no additional cost:

- Training: MDT shall host training meetings in order for Contractor to provide training regarding topics such as new chemicals, chemical application procedures, etc. Training meetings shall be held a minimum of two times a year. MDT reserves the right to host additional training meetings if necessary.
- Face-to-Face Meetings: When requested, Contractor shall meet with MDT contract administrator and chemical sprayers when further technical support is required. This may require meeting with contract users in the field.

**3.9.2 Emergency Services.** Contractor and/or staff shall be available to provide emergency support as needed. Emergency support could consist of a face-to-face meeting with a contract user in the field needing assistance or providing support via phone. If Contractor is not available to provide emergency support in person, Contractor shall provide support via phone call within one hour of receiving notice or within one day in the field if deemed necessary by contract user.

### **3.10 Reporting.**

**3.10.1 Term Contract Reporting.** Contractor shall furnish annual reports of term contract usage. Each report shall contain (1) the chemical name as listed in the contract, (2) total quantity sold of each item, (3) total dollars expended, and (4) name of the agency purchasing the item. Only those chemicals provided on the contract may be listed on the usage report. State shall notify Contractor when usage reports are due.

Reported volumes and dollar totals may be checked by State against state records for verification. Failure to provide timely or accurate reports may result in termination of the contract.

**3.10.2 Department of Transportation.** Contractor shall provide reports to MDT contract administrator bi-annually and as requested. MDT contract administrator shall notify Contractor of the types of reports required.

## **4. WARRANTIES**

**4.1 Warranty of Products.** Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect for a period of 30 days from the date of shipment or the product warranty, whichever period is greater. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless State specifies otherwise. Contractor acknowledges that exceptions will be rejected.

**4.2 Warranty of Services.** Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. 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, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

## **5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration of the agricultural supplies and services to be provided, State shall pay Contractor according to the schedule provided in Attachment C: Chemicals.

**5.2 Purchasing Card.** The State of Montana has a Purchasing Card Program in place that gives agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment.

**5.3 Withholding of Payment.** In addition to its other remedies under this contract, at law, or in equity, State may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than, in the aggregate, 15% of the total value of the subject statement of work or applicable contract.

**5.4 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate State's electronic funds transfer payments.

**5.5 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.

## **6. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with State of Montana. 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.

## **7. 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.

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

**8.1 Access to Records.** Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. State may terminate this contract under section 16, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**8.2 Retention Period.** Contractor shall create and retain all records supporting the agricultural chemicals provided for a period of eight years after either the completion date of this contract or termination of the contract.

## **9. 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.

## **10. HOLD HARMLESS/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.

## **11. REQUIRED INSURANCE**

**11.1 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.

**11.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or 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.

**11.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal 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 any 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.

**11.4 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**11.5 Certificate of Insurance/Endorsements.** A 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 additional insured endorsements required by Contractor's commercial general liability and automobile liability policies. Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.*

## **12. 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.

## **13. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders 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.

## **14. 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.

## **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 incorporated 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. CONTRACT TERMINATION

**16.1 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.

**16.2 Termination for Convenience.** State may, by written notice to Contractor, terminate this contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination.

State shall pay Contractor only that amount, or prorated portion thereof, 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.

**16.3 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.

**16.4 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 the state 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.

## 17. EVENT OF BREACH – REMEDIES

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

- Products or services furnished fail to conform to any requirement;
- 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 22.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

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

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

- Terminate this Contract under Section 16.1, 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 16.3, 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.

## **18. 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.

## **19. 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.

## **20. 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.

Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

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

**21.1 Contract Liaisons.** All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between State's liaison and Contractor's liaison.

Bonny McCabe is State's liaison.  
State Procurement Bureau  
PO Box 200135  
Helena MT 59620-0135  
Telephone: (406) 444-3322  
Fax: (406) 444-2529  
E-mail: [bmccabe@mt.gov](mailto:bmccabe@mt.gov)

Mike Miller is Department of Transportation's liaison.  
Department of Transportation  
PO Box 201001  
Helena MT 59620-1001  
Telephone: (406) 444-6991  
E-mail: [mikmiller@mt.gov](mailto:mikmiller@mt.gov)

Brooks Hammel is Contractor's liaison.  
10 5th Avenue South  
Laurel MT 59044  
Telephone: (406) 855-5855  
E-mail: [hammelb@helenachemical.com](mailto:hammelb@helenachemical.com)

**21.2 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 facsimile. 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. A signed and dated acknowledgement of the notice is required of both parties.

**21.3 Identification/Substitution of Personnel.** Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. State reserves the right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this contract. State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

## **22. MEETINGS**

**22.1 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 the 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.

**22.2 Progress Meetings.** During the term of this contract, State's Contract Liaison may 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 Contract Liaison, Contractor's Contract Liaison, 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.

**22.3 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.

**22.4 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.

**23. 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.

**24. 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.

**25. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**26. AUTHORITY**

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

**27. 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.

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

**28.1 Contract.** This contract consists of 17 numbered pages, any Attachments as required, Solicitation SPB-IFB2016-0032J, 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.

**28.2 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.

**29. 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.

**30. EXECUTION**

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

STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION  
STATE PROCUREMENT BUREAU  
PO BOX 200135  
HELENA MT 59620-0135

HELENA CHEMICAL COMPANY  
10 5TH AVENUE SOUTH  
LAUREL MT 59044

FEDERAL ID #: 71-0293688

BY: Cheryl Gray, SFSD Administrator  
(Name/Title)

BY: Steven E. Alexander, Vice President  
(Name/Title)

[Signature]  
(Signature)

[Signature]  
(Signature)

DATE: 5-12-16

DATE: 4/29/16

Approved as to Legal Content:

Mike Mamon 4-18-16  
Legal Counsel (Date)

Approved as to Form:

Donny McCaule 4-18-16  
Procurement Officer (Date)  
State Procurement Bureau

## ATTACHMENT A: RETURNED GOODS POLICY

Bids must include a returned goods policy detailing authorization procedures for return of unopened containers, damaged goods, unauthorized substitutions, etc. Authorized return of goods **will not** be subject to any re-stocking fees.

Company Name: Helena Chemical Company

**Indicate your company's returned goods policy/procedures:**

Helena return policy will be in compliance with required per contract.

Product will be picked up upon request.

**ATTACHMENT B: ORDERING INFORMATION**

Indicate below the ordering information to be used by contract users when placing orders for agricultural chemicals.

**Name of contact person (s):** Brooks Hammel (406) 855-5855  
Mark Beeman (406) 828-8768

**Toll-free Order Telephone Number:** 1-844-648-8615

**Order Address:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Toll-free Order FAX Number:** 1-844-648-8616

**E-mail Address and/or Website where orders may be placed:** hammelb@helenachemical.com  
Beeman@helenachemical.com

**Indicate any special ordering procedures:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT C- CHEMICALS

	Chemical Name	Brand	Container Size	Unit	Unit Cost	Acceptable Substitute
P1.1	AMINE 2-4-D	Platoon	2.5 gallon container	GAL	\$10.10	WEEDAR 64
P1.2	AMINE 2-4-D	Platoon	30 gallon container	GAL	\$9.70	WEEDAR 64
P1.3	AQUASWEEP	Aquasweep	2.5 gal	GAL	\$37.50	
P1.4	ARSENAL	Polaris	2.5 gallon container / 2 case	GAL	\$47.50	
P1.5	CURTAIL	Curtail	2.5 gallon container	GAL	\$29.50	
P1.6	DETAIL	Detail	1 gallon container	GAL	\$550.00	
P1.7	DICAMBA +2, 4-D	Rifle D	2.5 gallon container	GAL	\$20.25	Rangestar
P1.8	DICAMBA	Rifle	2.5 gallon container / 2 case	GAL	\$40.00	Dicamba DMA
P1.9	DIURON 4L	Diuron 4L	2.5 gallon container / 2 case	GAL	\$16.00	Parrot 4L
P1.10	DUPONT STREAMLINE	DuPont Streamline	3 lb container	LB	\$91.68	
P1.11	ESCALADE (E-2)	E-2	2.5 gallon	GAL	\$28.00	
P1.12	ESCORT	Escort XP	8 or 16 oz. container	OZ	\$2.85	
P1.13	ESPLANADE - 200 SC	Esplanade -	QT	QT	\$295.36	
P1.14	ESPLANADE - 200 SC	Esplanade -	2.5 gallon	GAL	\$1,064.96	
P1.15	EVADE 4	Evade 4L	Gallon	GAL	\$10.00	
P1.16	FREQUENCY	Frequency	1 gallon container	GAL	\$720.00	
P1.17	GARLON 3A	Garlon 3A	2.5 gallon container / 2 case	GAL	\$46.00	
P1.18	GLYPHOSATE (Must Have Roadside Label And Turf Label)	Roundup Pro Concentrate	2.5 gallon container / 2 case	GAL	\$16.33	
P1.19	GLYPHOSATE (Must Have Roadside Label And Turf Label)	Razor Pro	2.5 gallon container / 2 case	GAL	\$9.60	Glystar Plus
P1.20	HI-DEP	Hi-Dep	2.5 gallon container / 2 case	GAL	\$22.60	
P1.21	HI-DEP	Hi-Dep	30 gallon drum	GAL	\$22.15	
P1.22	KARMEX XP	Karmex XP / Diuron	5 lbs.	LB	\$3.20	
P1.23	KROVAR I DF	Krovar I DF	6 lb. container	LB	\$9.15	
P1.24	MATRIX	Matrix	1.25 lb. container (20 oz.)	OZ	\$12.60	
P1.25	MILESTONE	Milestone	2.5 gallon container / 2 case	GAL	\$277.00	
P1.26	MILESTONE	Milestone	1 quart container	QT	\$70.75	
P1.27	OPENSIGHT	Opensight	1.25 or 10 lbs. container	LB	\$87.50	
P1.28	OVERDRIVE	Overdrive	7.5 lb. container / 4 case	LB	\$31.00	

	Chemical Name	Brand	Container Size	Unit	Unit Cost	Acceptable Substitute
P1.29	PAYLOAD DF	Payload	12 lb. container	LB	\$69.00	
P1.30	PENDULUM AQUA CAP	Pendulum AquaCap	2.5 gallon container / 2 case	GAL	\$52.50	
P1.31	PERSPECTIVE	Perspective	1.25 or 5 lbs. container	LB	\$82.08	
P1.32	PLATEAU	Plateau	1 gallon container	GAL	\$119.00	
P1.33	Prodiamnine 65 wdg	Prodiamine 65 WDG	5 lb.	LB	\$8.25	
P1.34	REMEDY ULTRA	Remedy Ultra	2.5 gallon container	GAL	\$56.78	
P1.35	RODEO	Aqua Neat	2.5 gallon container / 2 case	GAL	\$14.00	
P1.36	SABER	Saber	2.5 gallon container	GAL	\$22.60	Hi-Dep
P1.37	SABER	Saber	30 gallon drum	GAL	\$22.15	Hi-Dep
P1.38	TELAR	Telar XP	16 oz.	OZ	\$14.00	
P1.39	TORDON 22k	Tordon 22K	2.5 gallon container / 2 case	GAL	\$45.95	
P1.40	TRANSLINE	Transline	2.5 gallon container	GAL	\$150.00	
P1.41	VISTA	Vista XRT	2.5 gallon container / 2 case	GAL	\$156.00	
P1.42	WHITEOUT (2, 4-D) (Solventless L.V. 4)	Whiteout	2.5 gallon container	GAL	\$16.50	Solve LV-4
					<del>\$4410.00</del>	
P2.1	ALL CLEAR	All Clear	Gallon	GAL	\$28.00	
P2.2		Wipeout	Gallon	GAL	\$28.00	
P2.3	BIG FOOT DYE (BLUE)	Big Foot Dye (Blue)	Quart	QT	\$15.00	
P2.4		Hi - Light	Quart	QT	\$15.00	
P2.5	BIG FOOT DYE (BLUE)	Big Foot Dye (Blue)	Gallon	GAL	\$25.00	
P2.6		Spray Indicator	Gallon	GAL	\$25.00	
P2.7	FOAMBUST 20	Unfoamer	Gallon	GAL	\$28.00	
P2.8		Foambuster	Gallon	GAL	\$28.00	
P2.9	HI-LIGHT BLUE WSP	Hi-Light WSP Dye	40 / 1 lb. per case	CASE	\$220.00	
P2.10	HI-LITE DYE BLUE	Hi-Light	2.5 gallon container / 2 case	GAL	\$36.00	
P2.11	LIBERATE LECI-TECH	Liberate	2.5 gallon container	GAL	\$22.00	
P2.12		DLZ	2.5 gallon container	GAL	\$22.00	
P2.13	QUEST	Choice Weather Master	2.5 gallon container	GAL	\$15.00	
P2.14	R-11	Spreader 90	Non-Ionic, 1 gallon container	GAL	\$13.50	
P2.15		Spret	Non-Ionic, 1 gallon container	GAL	\$13.50	
P2.16	TURF TRAX WSP DYE	Turf Trax WSP Dye	40 packets / case	CASE	\$220.00	

	Chemical Name	Brand	Container Size	Unit	Unit Cost	Acceptable Substitute
P2.17		Hi - Light	40 packets / case	CASE	\$220.00	
P2.18	TURF TRAX WSP DYE Packet	Turf Trax WSP Dye		PKT	\$5.50	
P2.19		Hi - Light		PKT	\$5.50	
P2.20	WEATHERGUARD COMPLETE	Weatherguard Complete	2.5 gallon container	GAL	\$27.50	
P2.21		Accuquest	2.5 gallon container	GAL	\$27.50	
P2.22	BASAL BARK OIL	Bark Oil Blue LT	2.5 gallon container	GAL	\$11.50	
P2.23	BASAL BARK OIL	Impel Red	2.5 gallon container	GAL	\$11.50	
P2.24	SYL-TAC SURFACTANT	Phase	2.5 gallon container	GAL	\$39.00	
P2.25	SYL-TAC SURFACTANT	DyneAmic	2.5 gallon container	GAL	\$39.00	
P2.26	METHOLATED SEED OIL	MSO Concentrate	2.5 gallon container / 2 case	GAL	\$9.25	