

STATE OF MONTANA TERM CONTRACT

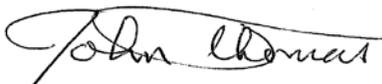
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T.C. #: DOA-IFB2016-0026JT
Title: Scrap Metal Purchase and Disposal
This is an exclusive contract.

CONTRACT TERM	FROM	July 1, 2016	CONTRACT STATUS	NEW (x)
	TO	June 30, 2018		RENEW ()
VENDOR ADDRESS	Pacific Steel and Recycling 5 River Drive South Great Falls, MT 59403		ORDER ADDRESS	
ATTN:	Ken Halko		ATTN:	
PHONE:	(406) 791-8512		PHONE:	
FAX:	(406) 899-8722		FAX:	
E-MAIL:	ken_halko@pacific-steel.com		E-MAIL:	

PRICES: Per Contract Agreement
 DELIVERY: Per Contract Agreement
 F.O.B.: Per Contract Agreement
 TERMS: Per Contract Agreement

REMARKS:

IFB/RFP No.: DOAIFB2016-0026JT	 John Thomas, CONTRACTS OFFICER	DATE: 07/01/2016
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AUTHORIZED SIGNATURE

**SCRAP METAL PURCHASE AND DISPOSAL
DOA-IFB2016-0026JT**

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, General Services Division, Surplus Property Program, (State), whose address and phone number are 16 West Custer, P.O. Box 200137, Helena, MT 59620-0137, (406) 444-9921 and Pacific Steel and Recycling, (Contractor), whose address and phone number are 5 River Drive South, Great Falls, MT 59403 and (406) 791-8512.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is July 1, 2016, through June 30, 2018, 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.

3. SERVICES AND/OR SUPPLIES

Contractor shall provide State the following scrap metal purchase and disposal services and as more fully described in DOA-IFB2016-0026JT and the Contractor's bid proposal. Contractor has been awarded all five service regions as defined in DOA-IFB2016-0026JT and shall provide service to the entire state.

Contractor shall provide scrap metal purchase and disposal requirements for all state agencies, as well as any cooperating agencies. Contractor is solely responsible for the collection, and recycling of scrap metal from each location, or for the accepting scrap at contractor location by state personnel. A more complete description of the services sought is provided in the Scope of Services Section of the IFB. Contractor shall ensure all work is performed in accordance with general trade practices and industry standards.

3.1 Transportation Requirements. Contractor shall supply, at its, all appropriate containers, labels and packaging used for transporting scrap metal for purchase and disposal at any location required by State. The price of such containers must be included in the cost to perform these services.

Contractor shall provide all labor, materials, packaging, paperwork, labeling and equipment necessary to transport the scrap metal. After loading of vehicle(s) by Contractor's personnel, Contractor shall secure the load for transport.

All vehicles used by Contractor to transport scrap metal shall be properly registered and have all necessary permits required by each state through which the vehicle must travel to reach the disposal facility.

State reserves the right to terminate the contract if Contractor has been cited for substantial or repetitive violations of law governing permits, transportation or operations.

3.2 On-site Requirements/Cleanup. Contractor shall verify measurements to become fully aware of project conditions and labor requirements. Failure to do so will not relieve Contractor of its obligation to

furnish all materials and labor necessary to carry out the contract requirements.

Contractor shall adequately protect the work, adjacent property and the public in all phases of work. Contractor shall be responsible for all damages or injury due to its action or neglect.

Contractor shall maintain access to all phases of the project pending inspection by State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

Contractor shall respond within seven calendar days after notice of observed defects has been given by State and shall proceed to immediately remedy such defects. Failure to respond to notice or remedy noted defects may result in State having the work corrected at Contractor's expense.

Contractor cleanup requirements:

- (a) Keep premises free from debris and accumulation of waste;
- (b) Clean up any oil or fuel spills; and
- (c) Remove all construction equipment, tools and excess materials before final payment by State.

3.3 Material Handling.

- **Weight:** Contractor's truck shall be empty upon arrival for pickup. Tonnage of scrap metal for each pickup shall be determined by the difference between laden and empty weight of the delivery vehicle, as determined by certified scales, registered by the State of Montana.
- **Containers:** Contractor shall furnish transfer bins or roll-off containers upon request to the designated State agency locations which may be anywhere within the state. No charge shall be assessed for transfer bins or roll-off containers. It is possible additional bins or roll-off containers may be requested from Contractor as the volume of metal being received is increased or if new locations warrant their own bins or roll-off containers.
- **Container Inspection:** Contractor shall inspect each Contractor-provided container at time of pick up for leaks or overfilling and to report to the appropriate person monitoring the collection. A notation is also to be made on the collection slip. Additionally, Contractor shall provide sufficient equipment and/or personnel to transfer materials without requiring manual assistance from agency personnel.

All transport costs are the Contractor's responsibility.

At the time of collection, a collection slip or receipt shall be left at each location and must contain the following basic information:

- Driver name;
- Description of product collected; and
- Signature of employee who is monitoring the collection

3.4 Service Requests. The Contractor shall work with requesting agencies to establish an effective collection and pick-up process.

- Material shall be loaded by Contractor's personnel in an efficient, safe, and competent manner. The State will not be responsible for weight distribution of the load. State personnel will not assist in the loading, however, at the discretion of the State agency, State personnel may use agency forklift to expedite loading in a safe and timely manner. Contractor relieves the State of all liability if damage occurs to Contractor's equipment while loading.
- Contractor shall provide the container at no cost to the requesting agency, but shall retain the right to take back ownership of container at the end of the contract period. All waste products contained therein shall be appropriately credited or charged to the requesting agency at the time of removal from the site.

- Contractor shall partner with the requesting agency to establish automatic, scheduled servicing, or on-call service, as needed. If an automatic schedule has not been established with an agency, Contractor shall respond to the requesting agency within three business days. Contractor shall schedule collection during normal working hours unless other hours are mutually agreed upon. Contractor will perform services between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday. Contractor will not perform services on the weekend or holidays.
- Contractor shall perform all services in accordance with local, state, and federal laws pertaining to the removal, transportation and disposal of all waste products.

3.5 State and Cooperative Agencies. The following agencies currently generate scrap metal that may require service under this contract:

- Montana Department of Transportation
- Montana Highway Patrol
- Department of Justice
- Department of Corrections
- Department of Natural Resources and Conservation
- Fish, Wildlife, and Parks
- Department of Administration-Facilities Management
- Department of Health and Human Services
- Any other state agency not listed
- Cooperative agencies: local governments, school districts and tribal governments listed at the following site: <https://emacs.mt.gov/cooperativepurchasing>

The State reserves the right to add/delete locations as needed. Cooperative agencies have optional use of this contract.

3.6 Tools and Equipment. Contractor shall provide all labor, equipment, tools and other items necessary for the complete performance of this contract.

3.7 Quantities. This contract does not reference quantities. The State does not guarantee the amount of usage of this contract.

3.8 Condition of Scrap Metal. The State makes no express warrantee or guarantee of the condition of the metal. "Property will be sold as is – where is basis". The State disclaim all warranties either express or implied, including any implied warranty of merchantability of fitness for a particular purpose. The State will not assume nor authorize another person to accept any liability in connection with the sale of items listed in this invitation for bid.

3.9 Agency Haul-Ins. State agencies must have the ability to drop scrap metal off at Contractor-provided secure locations at each of these cities: Kalispell, Missoula, Butte, Havre, Glasgow, Great Falls, Helena, Bozeman, Billings, Miles City and Sidney. The State reserves the right to haul truckloads of scrap metal to the local contracting facility after the proper notification has been given to that facility. Contractor has the right to reject haul-ins if not properly notified. The Contractor shall provide detailed scale receipt to the agency personnel at time of delivery. Scale receipt must list weight, location, and dollar value. No cash or checks may be provided to state personnel but all money must be forwarded to the State's Contract Manager.

3.10 Hazardous Materials. This contract does not provide for pickup of any hazardous materials. The State will be responsible for any labeling, tagging or inspection of potentially hazardous materials. Contractor can reflect any potential hazardous materials requested for pick up and will report directly to the State Procurement Bureau to address the problem.

According to the Federal Property Management Regulations (Amendment H-183, January 1992) hazardous material means property that is deemed a hazardous material, chemical substance, or mixture or hazardous waste under the Hazardous Materials Transportation Act (HTMA), The Resource Conservation and Recovery Act (RCRA), or the Toxic Substances Control Act (TSCA).

3.11 Minimum Pickups. Minimum pickups of metal scraps, contaminated scrap by Contractor employees will be one gross ton (2240 pounds).

3.12 Recyclable/Non-Recyclable. Non-recyclable scrap items will not be picked up. Recyclable items covered by the contract may be delivered, by State employees, to branches of Contractor in any quantity (may not meet the gross one ton requirement).

3.13 Reporting. Contractor shall provide the State a summary of the collection activities, as an electronic report on a monthly basis for the term of this contract. The electronic monthly reports must be transmitted to the State no later than the 10th of each month.

The electronic monthly reports must include the following:

- A summary of the prior month's scrap metal collected from State Agencies.
- The number and type of container(s) (example: one 40-yard bin) and the scrap grade (such as: miscellaneous sheet metal).
- The date the scrap metal was picked-up.
- The price paid per ton for recycled/reused scrap metal.
- The name of the Agency that generated the scrap metal.

A more complete description of the services sought is provided in the Scope of Services Section of the IFB..

4. WARRANTIES

4.1 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 Invoicing and Payment Schedule. The Contractor shall authorize and provide payment on a monthly basis to the State Surplus Property Program for the disposal of scrap metal.

No cash or checks shall be provided to state personnel but all payments shall be forwarded to the Surplus Property Program on or before the tenth (10th) day of each month for the material purchased during the previous calendar month. Payments will be accompanied by a document indicating the type of scrap, generating agency, date, weight, location, and dollar value of pickup. Contractor shall show conversion of percentages to actual net prices on the remittance document. A copy of the applicable American Metals Market table must accompany payment. Payments shall be made payable to: State of Montana Surplus Property Program, PO Box 200137, Helena, MT 59620-0137.

In consideration of the scrap metal purchase and disposal services to be provided, Contractor shall pay the State according to the schedule provided in Contractor's response to DOA-IFB2016-0026JT and as Attachment A to this contract.

5.2 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. The State of Montana University System has optional use of the services which are specified in this contract.

7. 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 considered to be an "Exclusive" use contract and state agencies must obtain the specified product/service from the Contract holder(s), unless the Contract allows otherwise. However, State does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the Contract.

8. PREVAILING WAGE REQUIREMENTS

8.1 Montana Resident Preference. The nature of the work performed, or services provided, under this Contract meets the statutory definition of a "public works contract" in 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services. Contractor shall abide by the requirements set out in 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

8.2 Standard Prevailing Rate of Wages. In addition, unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in 18-2-401, MCA, in which the total cost of the contract is greater than \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

The standard prevailing rate of wages paid to workers under this Contract must be adjusted 12 months after the date of the award of the public works contract per 18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

8.3 Notice of Wages and Benefits. Furthermore, 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with 18-2-423, MCA.

8.4 Wage Rates, Pay Schedule, and Records. 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for Non-construction Services 2016.

9. ACCESS AND RETENTION OF RECORDS

9.1 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 17, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

9.2 Retention Period. Contractor shall create and retain all records supporting the scrap metal purchase and disposal services for a period of eight years after either the completion date of this Contract or termination of the Contract.

10. 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.

11. 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.

12. REQUIRED INSURANCE

12.1 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.

12.2 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.

12.3 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.

12.4 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence 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 automobiles leased, owned, or borrowed by Contractor.

12.5 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.

12.6 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.

13. 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.

14. 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.I. 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.

15. 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.

16. 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>.

17. CONTRACT TERMINATION

17.1 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.

17.2 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.

17.3 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 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.

18. EVENT OF BREACH – REMEDIES

18.1 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 23.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

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

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

- Terminate this Contract under Section 17.1, 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 17.2, 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.

19. 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.

20. 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.

21. 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.

22. LIAISONS AND SERVICE OF NOTICES

22.1 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.

Tama Lutsko is State's liaison
(Address): P.O. Box 200137
(City, State, ZIP): Helena, MT 59620-0137
Telephone: (406) 444-9921
Cell Phone:
Fax:
E-mail: tlutsko2@mt.gov

Ken Halko is Contractor's liaison
(Address): 5 River Drive South
(City, State, ZIP): Great Falls, MT 59405
Telephone: (406) 791-8512
Cell Phone: (406) 899-8722
Fax:
E-mail: ken_halko@pacific-steel.com

22.2 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.

22.3 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for State under this Contract. 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.

23. MEETINGS

23.1 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.

23.2 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.

23.3 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.

23.4 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.

24. 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.

25. 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.

26. TAX EXEMPTION

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

27. AUTHORITY

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

28. 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.

29. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

29.1 Contract. This Contract consists of 12 numbered pages, any Attachments as required, Solicitation # DOA-IFB2016-0026JT, 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.

29.2 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.

30. 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.

39. EXECUTION

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

STATE OF MONTANA
Department of Administration
General Services Division
P.O. Box 200137
Helena, MT 59620-0137

PACIFIC STEEL AND RECYCLING
5 RIVER DRIVE SOUTH
GREAT FALLS, MT 59405
FEDERAL ID #81-0246538

BY: Steve Balaunt
(Name/Title)
[Signature]
(Signature)

BY: Ken Halko V.P.
(Name/Title)
[Signature]
(Signature)

DATE: 12 Jul 2016

DATE: 7-5-16

BY: Sheila Hogan, Director
(Name/Title)
[Signature]
(Signature)

DATE: 7/12/2016

Approved as to Legal Content:
Mike Manion 6-27-2016
Legal Counsel (Date)

Approved as to Form:
[Signature] 6-27-2016
Procurement Officer (Date)
State Procurement Bureau

ATTACHMENT A

Commodity Grade Description	American Metal Market (AMM) Description	Weight	Bid Price (% of AMM Price REGION 1)	Bid Price (% of AMM Price REGION 2)	Bid Price (% of AMM Price REGION 3)	Bid Price (% of AMM Price REGION 4)	Bid Price (% of AMM Price REGION 5)
Contaminated Mixed #2 Heavy Melt (Mixed HMS)	AMM Scrap Iron and Steel Prices Consumer Buying Prices No. 1 HEAVY MELT – Composites	Gross Ton	35%	35%	35%	35%	35%
Aluminum	AMM Nonferrous Scrap Prices Aluminum – Los Angeles Old Aluminum, sheet and cast	Pound	65%	65%	65%	65%	65%
Copper	AMM Nonferrous Scrap Prices Copper—Los Angeles #1 Heavy Copper and Wire	Pound	50%	45%	45%	50%	60%
Insulated Copper	AMM Nonferrous Scrap Prices Copper—Los Angeles Light Copper	Pound	30%	25%	25%	25%	40%
Brass	AMM Nonferrous Scrap Prices Copper—Los Angeles Yellow Brass Solids	Pound	50%	24%	30%	30%	60%
Lead	AMM Nonferrous Scrap Prices Lead—San Francisco Heavy Soft Lead	Pound	30%	28%	28%	30%	40%
Stainless Steel	AMM Stainless Steel Scrap Prices Dealer Buying Prices—Los Angeles 304 solids, clips	Pound	50%	45%	45%	45%	50%
Auto Bodies/Light Gauge Tin	AMM Scrap Iron and Steel Prices Export Yard Buying Prices—Seattle/Portl and Auto Bodies	Gross Ton	50%	50%	50%	50%	60%