

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **August 19, 2011**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B0200030
 (Supersedes Contract #071B8200247)
between
THE STATE OF MICHIGAN
and

| | | |
|---|------------------|---|
| NAME & ADDRESS OF CONTRACTOR | | TELEPHONE (734) 525-3469 Jacque Johnson |
| Specialized Pharmacy Services, LLC d.b.a. Eldercare Pharmacy 33510 Schoolcraft Road Livonia, MI 48150 Email: jacque.johnson@omnicare.com | | |
| | | BUYER/CA (517) 373-6327 Mary Ostrowski |
| Contract Compliance Inspector: Paul Walters Pharmaceuticals (Prescription and Non-Prescription) – Department of Human Services – Bay Pines Center | | |
| CONTRACT PERIOD: From: October 5, 2009 | | To: December 31, 2011 |
| TERMS | Net 30 | SHIPMENT 1 day ARO |
| F.O.B. | Delivered | SHIPPED FROM Escanaba, MI |
| MINIMUM DELIVERY REQUIREMENTS None | | |

NATURE OF CHANGE(S):

Effective immediately, the State hereby exercises four months of an option year, revising the Contract end date to December 31, 2011. Funds in the amount of \$200,000.00 are hereby ADDED to this Contract.

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

AUTHORITY/REASON:

Per agency/Contractor agreement, Ad Board approval on 8/30/11, and DTMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$339,405.75

**Contract 071B0200030
Change Notice No. 2
Signature Block**

FOR THE CONTRACTOR:

Specialized Pharmacy Services, LLC

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB-Purchasing Operations

Division

Date

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

August 2, 2011

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B0200030
 (Supersedes Contract #071B8200247)
between
THE STATE OF MICHIGAN
and

| | | |
|---|--|---|
| NAME & ADDRESS OF CONTRACTOR | | TELEPHONE (734) 525-3469 Jacque Johnson |
| Specialized Pharmacy Services, LLC d.b.a. Eldercare Pharmacy 33510 Schoolcraft Road Livonia, MI 48150 Email: jacque.johnson@omnicare.com | | |
| | | BUYER/CA (517) 373-6327 Mary Ostrowski |
| Contract Compliance Inspector: Paul Walters Pharmaceuticals (Prescription and Non-Prescription) – Department of Human Services – Bay Pines Center | | |
| CONTRACT PERIOD: From: October 5, 2009 To: August 31, 2011 | | |
| TERMS | | SHIPMENT |
| Net 30 | | 1 day ARO |
| F.O.B. | | SHIPPED FROM |
| Delivered | | Escanaba, MI |
| MINIMUM DELIVERY REQUIREMENTS | | |
| None | | |

NATURE OF CHANGE(S):

Effective immediately, the State hereby exercises 12 days of an option year, revising the Contract end date to August 31, 2011.

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

AUTHORITY/REASON:

Per agency/Contractor agreement, and DTMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$139,405.75

**Contract 071B0200030
Change Notice No. 1
Signature Block**

FOR THE CONTRACTOR:

Specialized Pharmacy Services, LLC

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Senior Deputy Director

Name/Title

DTMB-Purchasing Operations

Division

Date

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

October 7, 2009

**NOTICE
 TO
 CONTRACT NO. 071B0200030
 (Supersedes Contract #071B8200247)
 between
 THE STATE OF MICHIGAN
 and**

| | |
|---|--|
| NAME & ADDRESS OF CONTRACTOR Specialized Pharmacy Services, LLC d.b.a. Eldercare Pharmacy 33510 Schoolcraft Road Livonia, MI 48150 Email: jacque.johnson@omnicare.com | TELEPHONE (734) 525-3469 Jacque Johnson BUYER/CA (517)241-4225 Kevin Dunn |
| Contract Compliance Inspector: Paul Walters Pharmaceuticals (Prescription and Non-Prescription) – Department of Human Services – Bay Pines Center | |
| CONTRACT PERIOD: From: October 5, 2009 To: August 19, 2011 | |
| TERMS <p style="text-align: center;">Net 30</p> | SHIPMENT <p style="text-align: center;">1 day ARO</p> |
| F.O.B. <p style="text-align: center;">Delivered</p> | SHIPPED FROM <p style="text-align: center;">Escanaba, MI</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">None</p> | |

The terms and conditions of this Contract are those of ITB No. 07118200080, this Contract Agreement and the vendor's quote dated 3/24/2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

This Contract replaces Contract #071B8200247 as vendor has changed name and FEIN. No additional funds have been added.

CURRENT AUTHORIZED SPEND LIMIT: \$139,405.75

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

October 16, 2008

**NOTICE
 OF
 CONTRACT NO. 071B8200247
 between
 THE STATE OF MICHIGAN
 and**

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| NAME & ADDRESS OF CONTRACTOR Eldercare Home Pharmacy 1823 7th Avenue North Escanaba, MI 49829 Email: steve.genisot@omnicare.com | | TELEPHONE Rolf Schrader (877) 789-4451 |
| | | CONTRACTOR NUMBER/MAIL CODE |
| | | BUYER/CA (517)241-1647 Irene Pena, CPPB |
| Contract Compliance Inspector: Paul Walters Pharmaceuticals (Prescription and Non-Prescription) – Department of Human Services – Bay Pines Center | | |
| CONTRACT PERIOD: From: August 20, 2008 | | To: August 19, 2011 |
| TERMS Net 30 | SHIPMENT 1 day ARO | |
| F.O.B. Delivered | SHIPPED FROM Escanaba, MI | |
| MINIMUM DELIVERY REQUIREMENTS None | | |
| MISCELLANEOUS INFORMATION: | | |

The terms and conditions of this Contract are those of ITB No. 07118200080, this Contract Agreement and the vendor's quote dated 3/24/2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$300,000.00

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

**CONTRACT NO. 071B8200247
 between
 THE STATE OF MICHIGAN
 and**

| | |
|--|--|
| NAME & ADDRESS OF CONTRACTOR Eldercare Home Pharmacy 1823 7th Avenue North Escanaba, MI 49829 Email: steve.genisot@omnicare.com | TELEPHONE Rolf Schrader (877) 789-4451 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517)241-1647 Irene Pena, CPPB |
| Contract Compliance Inspector: Paul Walters Pharmaceuticals (Prescription and Non-Prescription) – Department of Human Services – Bay Pines Center | |
| CONTRACT PERIOD: From: August 20, 2008 To: August 19, 2011 | |
| TERMS <p style="text-align: center;">Net 30</p> | SHIPMENT <p style="text-align: center;">1 day ARO</p> |
| F.O.B. <p style="text-align: center;">Delivered</p> | SHIPPED FROM <p style="text-align: center;">Escanaba, MI</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">None</p> | |
| MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB No. 07118200080, this Contract Agreement and the vendor's quote dated 3/24/2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence. | |
| Estimated Contract Value: \$300,000.00 | |

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07118200080. Orders for delivery will be issued directly by the Department of Department of Human Resources through the issuance of a Purchase Order Form. All terms and conditions of the invitation to bid are made a part hereof.

| | |
|--|---|
| FOR THE CONTRACTOR: <p style="text-align: center;">Eldercare Home Pharmacy</p> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p> | FOR THE STATE: <p style="text-align: center;">Signature</p> <p style="text-align: center;">Irene L. Pena, Buyer Specialist</p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;">Commodities Division, Purchasing Operations</p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p> |
|--|---|

Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This is a Contract to provide pharmaceuticals for the Michigan Department of Human Services.

1.002 PROJECT TITLE AND DESCRIPTION

The purpose of this Contract is to provide pharmacy services for the Michigan Department of Human Services (DHS), Bureau of Juvenile Justice (BJJ), Bay Pines Center (BPC) located in Escanaba Michigan. The Contractor shall provide a program which meets all Michigan Pharmacy Board requirements and all State, Federal and local laws and ordinances whether now in effect or hereafter enacted or ordered and implemented.

1.003 PROJECT CONTROL

Project Control

- a. The Contractor will carry out this project under the direction and control of the *MDHS-Michigan Department of Human Services, BJJ*.
- b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet biweekly as a minimum, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.
- c. The Contractor will submit brief written biweekly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.
- d. Within five (5) working days of the award of the Contract, the Contractor will submit to the MDHS-BJJ project director for final approval a work plan, which must include the following:

The Contractor's project organizational structure.

- (1) The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
- (2) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- (3) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

Reports

The Contractor shall provide monthly drug utilization reports. The report may be organized according to patient, prescriber, or drug category according to Bay Pines needs. The following reports shall be available from the Contractor: Monthly Drug Usage, Monthly Psychotropic Usage, Patient Profiles, Prescriber Profiles, Non-Formulary Usage Report, and HIV Medication Usage.

The Contractor shall provide to Bay Pines Proof-Of-Use form with stock medications and controlled substances. The facilities shall use the Proof-of-Use forms to document administration of medication from the container/blister card to provide accountability for the medication. In order to document the disposition of controlled substances for Drug Enforcement Agency verification,



Bay Pines shall return to the Contractor the Proof-of-Use forms used with controlled substances when the medication in the container is depleted.

Seven (7) days prior to the end of each month, the Contractor shall provide BPC with a Medication Profile Report that contains all active prescriptions including resident names, medication, dose, prescription expiration date, and sorted by prescribing physician. Bay Pines shall use the Profile Report to reorder prescriptions for the next month or cycle and return to the Contractor by fax for processing.

1.004 COMMENCEMENT OF WORK

Contractor shall show acceptance of this agreement by signing a copy of this contract and returning it to the contract administrator. Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

1.1 Product Quality

1.101 SPECIFICATIONS

All commodities and/or services to be furnished hereunder shall conform to the specifications as noted in the "Invitation to Bid" and/or copies of specifications attached.

The Contractor shall provide pharmacy services to the residents of the DHS-BJJ-BPC consisting of the following:

Transmission of Prescriptions:

Eldercare Home Pharmacy (Eldercare) *an Omnicare Company* is able to receive and process prescriptions and provide pharmacy services in several ways. This includes faxing prescriptions, verbal phone orders or by obtaining the prescription from a designated Bay Pines employee. Eldercare office hours are: Monday through Friday 7:30 a.m. to 6:00 p.m. and Saturday 10:00 a.m. to 2:00 p.m. After hours a designated pharmacist is on call and can be reached twenty-four (24) hours a day, seven (7) days a week. The pharmacist is available for questions or after hours emergency fills. Eldercare has a contracted courier service that delivers on a routine schedule every evening or is available at all times for STAT runs. Therefore, they are accessible anytime the Bay Pines Center would need a delivery.

Eldercare is located two miles south of Bay Pines Center. This allows timely services and no delays in the treatment of health conditions for the clients residing in Bay Pines Center.

Prior to the beginning of this Contract, the pharmacy will need to receive the following information on each patient: name, date of birth, social security number, drug allergies and insurance information (i.e. private insurance, Medicaid number).

The Contractor shall establish procedures to verify completeness of transmitted order. With each order the facility shall send copy of current Medicaid eligibility card for every patient covered by Medicaid.

Generic Medications:

The Contractor shall provide generic medications unless there is no generic substitute or the physician specifies brand only. Generics are always dispensed first unless there is no generic available or unless the Doctor specifies Dispense as Written (DAW). Also, the Clinical Intervention Center (CIC) is a program that Eldercare has implemented to provide therapeutic interchange when permissible for less expensive alternatives.

Over the Counter Medications:

The Contractor shall supply Over the Counter (OTC) medications as ordered by the facility's designee. Eldercare keeps a large stock of Over the Counter (OTC) products on hand and can be ordered according to the Bay Pines Center needs. Eldercare will need Bay Pines Center to generate a list of their stock items they desire.

Stock Medications:

For each facility, the Contractor shall establish stock medications that can be used to meet the medication needs of those patients needing immediate implementation of therapy (*i.e.* antibiotics, bronchial inhalers, anticonvulsants, *etc.*). The Contractor shall conduct an analysis of the STAT drug needs at Bay Pines and establish a supply of stock medications to meet those needs. Stock medications that can be filled with sufficient lead-time shall be sent by regular ground delivery and not by overnight courier service.

Policy Development:

The Contractor shall publish written instructions on pharmacy services policy and ordering procedures for BPC. The procedures shall instruct the facility on how to order, document, and receive medications. The BPC director and the Contract Administrator will have final approval of the policy and procedures document prior to publication. The Contractor, in conjunction with the facility contact person, shall review the policy and procedures annually. The Contractor will be responsible for any required modifications of policy and procedures document during the Contract period. The policy and procedures document shall be the property of the State of Michigan. Eldercare will provide a copy of their Policy and Procedure manual explaining all aspects of processing and delivering pharmaceuticals. This manual will elaborate in detail the ordering, distribution, receiving, storage, labeling, drug regimen review, drug disposal, special situations, medication forms, and medication administration.

Other Services:

The Contractor shall provide a pharmacist and/or physician for analysis and consultation with the BPC director, Contract Administrator, and BPC Medical staff on prescribing practices and treatment alternatives. The Contractor shall provide emergency access to a pharmacist. The Contractor shall provide access to a pharmacist through a toll-free or local telephone number, twenty-four (24) hours per day, and seven (7) days per week. Eldercare will provide the Bay Pines Center with an Eldercare staff directory with contact information. A pharmacist is always available for consultations and questions and can be reached nightly, on weekends, and during holidays. The after hours phone number for contact is (877) 906-5446. This is an after hours service that contacts the designated pharmacist that is on call.

Bay Pines shall package and return unused medication once a month. The Contractor shall accept and credit BCP accounts for all returned, unused medication including controlled substances. Bay Pines will be able to return medication as often as needed. The pharmacy credits daily upon return to promptly post credits on patient accounts. The returns exclude any control substances being returned back to the pharmacy per State law for credit or destruction.

Billing:

The Contractor shall bill on a monthly basis. The statement shall be itemized in the following manner for each resident:

- (a) Patient name
- (b) Prescription number (if applicable)
- (c) Name of medication and number of units
- (d) Total cost of prescription
- (e) Any additional service charge

The Contractor shall directly bill the Michigan Medicaid program for all patients covered by Medicaid. The Contractor agrees to accept payment from Medicaid for these patients and not bill



DHS. However, should the claim from the Contractor be rejected by Medicaid, due to erroneous or incomplete information submitted to the Contractor by DHS, the Contractor may immediately bill DHS. The Bay Pines Center will receive a billing statement from the pharmacy for the services they have rendered each month. The statements will include patient names, prescription number, name of medication, date of service, and total cost of prescription. Eldercare will bill all insurances first and will accept Medicaid payments.

1.102 RESEARCH AND DEVELOPMENT

Omnicare Clinical Research is a leading research organization and provides clinical trials management, data analysis and data submission in all major therapeutic categories for the pharmaceutical manufacturers and biotechnology companies. Through its Peri-Approval and Geriatric Studies Group, Omnicare provides the skill sets necessary to assist drug manufacturers in the development of new drugs promoting the well-being of the elderly.

1.103 QUALITY ASSURANCE PROGRAM

Quality Assurance and Consultant Pharmacist:

The Contractor must assure that every medication dispensed is in compliance with the prescribed orders and has been carefully reviewed for information by a registered pharmacist. The Contractor's pharmacist shall screen all prescription orders for drug interactions, allergy interactions, therapeutic duplications and formulary status. In addition, the Contractor's pharmacist shall review the prescription after the order has been filled and again at the time the order is being packaged to be sent to the facility.

The Contractor shall provide Bay Pines with "Pharmacy Discrepancy Logs" which the facility will complete and send to the Contractor if an error is detected by the facility. The Contractor shall review the returned "Pharmacy Discrepancy Logs" with appropriate staff and if needed develop a corrective plan of action. The corrective plan of action shall be sent to the facility and to the Contract Administrator.

The Contractor must provide a Michigan licensed pharmacist to conduct quarterly on-site audit and quality assurance review for each facility. The audit and quality assurance review shall be approximately two (2) hours each quarter for Bay Pines. A written report shall be submitted to the facility's contact person and the Contract Administrator identifying any areas of concern or recommendations for improving pharmacy services and staff performance relative to pharmacy services.

Once Eldercare receives a prescription it is first processed into the computer by an order entry technician. The pharmacist then accesses the completed entry through the computer and verifies that all information is correct: name, drug, strength, quantity, refills, and day supply. After the pharmacist signs off on the correctness of the script, they then release the label to be printed and filled by a filling/packaging technician. The proper medication is pulled off the shelf and packaged according to the directions on the label. All of Eldercare tablets/capsules are filled in a thirty (30) day medication card also known as a blister pack. Bulk items such as patches, eye/ear drops, creams, ointments, etc. are labeled on the boxes/tubes that they come packaged in from the manufacturer.

All of Eldercare prescription labels have barcodes that go through a check-point system. This process allows the pharmacy to eliminate errors. The first scan is conducted by one of the pharmacist; they scan the pharmaceutical label and then scan the product barcode (manufacturer bottle, tube, or box). This allows for a double check against looking at the medication. The pharmacist verifies that what they scanned and looked at is correct. The final process is conducted by a technician to scan the labeled product into the appropriate delivery box. This scanning also generates a delivery manifest for everything that was filled for that facility during the day. If one product is missing from the scanning process, the delivery manifest will not print and this will allow Eldercare to double check for any missing items for that day. In the event of an



error, the pharmacy needs to be contacted immediately so it can be corrected. Bay Pines Center will be provided with an Omnicare form for them to keep track of errors and have a documented record on hand. The pharmacy will be pleased to go over such errors with the facility and generate a plan of correction if necessary. Eldercare will provide Bay Pines with a licensed pharmacist to perform quarterly on-site audits. Omnicare has a form that the pharmacists follow when conducting an audit. This form includes the following check points: medication station, refrigerator, emergency supply, controlled substances. The pharmacist will generate a report when finished and send it to the appropriate contacts for recommendations and concerns for pharmacy services.

Audit by the State:

Purchasing Operations and the DHS-BJJ reserves the right to allow two state employees to inspect the Contractor's pharmacy location annually at the Contractor's expense. The State shall perform random audits of invoices from the Contractor against the Average Wholesale Price (AWP) and against the prescriptions.

1.104 WARRANTY FOR PRODUCTS OR SERVICES

If a product would be faulty due to the manufacturer it will be replaced. Eldercare will follow and abide by all state and federal pharmaceutical standards.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

Eldercare has two (2) options for dispensing medication to the Bay Pines Center. Bay Pines will have the option to choose from:

1. Thirty (30) day cycle filled very thirty (30) days Bay Pines Center will receive their new medications. These medications will automatically refill, there will be no reason to call in scheduled refills. The pharmacy's computer system automatically generates the refills for the expected anniversary refill date.
2. Refill on Demand (ROD). This can be referred to as E-refill; the facility would be provided with portable electronic scanners that would be used to scan any product that is due for a refill. Typically six (6) days before the medication runs out for a client they are to scan the barcode on the pharmaceutical label. After the barcodes have been scanned, these scanners can then be plugged into a computer with the appropriate USB cord that comes with the scanners. It is then downloaded through an Omnicare website called Omniview. Refills can be added multiple times a day, as well as, anytime during the day. This website is only for Omnicare facilities and it allows them to have access to what the pharmacy is working on for that particular facility. It is HIPAA compliant, as well as, safe and secure.

If there are any questions or concerns the pharmacy can be reached through phone, faxed, or by visit. The toll free number to reach Eldercare is (877) 789-4451. Our customer service department is always available to help out and assist with any transitional problems, questions or concerns.

1.202 TRAINING

Orientation and Training:

The Contractor shall develop, in conjunction with the Contract Administrator, an orientation program for BPC staff regarding ordering from the Contractor, receiving and administering medications.

The Contractor shall provide annual training locally to appropriate BPC staff (Shift Supervisors, Youth Specialists and Youth Aids) on medication handling and administration. The training shall:



- A. Occur on at least three different dates
- B. Last a minimum of three (3) hours
- C. Not overlap BPC's afternoon shift change (usually 2:00 PM).

Eldercare will set up in-service dates with the Bay Pines Center to complete presentations at three different dates and times. It is important to reach out to all shifts; this way the whole facility gets to know some of the pharmacy staff and the pharmacy services Eldercare has to offer. If further training or follow-up is required, Eldercare will set up additional dates and times to adequately train the Bay Pines Center staff.

1.203 REPORTING

Eldercare will comply with all necessary Reporting Requirements such as: itemized reporting, open invoice reports, delivery, and quantity and service compliance reports. We have a great ability to customize reporting and provide them to the State on a monthly or as needed basis.

1.204 SPECIAL PROGRAMS

Eldercare will allow credits on all returnable items according to State of Michigan law.

1.205 SECURITY

The resulting Contract may require frequent deliveries to State of Michigan facilities. Eldercare has a contracted courier service and is bonded, K. J. Robitalle Enterprise, which screens their employees prior to hiring. The Eldercare staff and the courier staff all wear identification badges. Badges include company, address, phone number, personal picture, and name with job title so each person is identifiable. The pharmacy is located in a discrete and quiet industrial building. Eldercare is a closed door pharmacy which services to long term care facilities, assisted living homes, adult foster care, jails, group homes, and detention centers. This allows us to have a one on one relationship with all facilities that Eldercare services. The pharmacy is set up with security cameras, locked entrances, and alarm system. All Eldercare employees prior to hiring undergo drug screenings, background checks and reference checks.

The State may decide to also perform a security background check. If so, the Contractor will be required to provide to the State a list of all delivery people that will service State of Michigan facilities, including name and date of birth (social security number or driver license number would also be helpful).

The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities.

1.3 Delivery Capabilities

1.301 TIME FRAMES

Delivery Needs:

The Contractor must be capable of delivering dispensed prescriptions and over the counter medication the next business day following the transmission of the order to the Contractor, if the order is transmitted to the Contractor by 4:00 PM E.S.T. The Contractor shall provide deliveries to Bay Pines six- (6) days a week as needed.

Replenished stock medications, cycle filled chronic medications and bulk quantities of liquid products (i.e. Maalox bottles) that can be filled with sufficient lead time shall be sent by regular ground delivery.

Each delivery shall contain a delivery sheet to facilitate receipt of ordered medications. The facility shall immediately notify the Contractor of any discrepancy. The Contractor shall immediately correct any discrepancy with the next business day delivery.



Bay Pines Center uses a prescription cycle of one calendar month (actual days for that month). The contractor shall fill initial prescriptions until the end of the current prescription cycle. The Contractor shall deliver medication refills and corresponding Medication Administration Records (MAR) two (2) working days prior to the end of the prescription cycle. Medication will be sorted by pod/wing and then alphabetically by resident's last name.

It is requested that all orders be delivered within one (1) calendar days after receipt of order. Eldercare will deliver Bay Pines their medication the same day they are ordered. If a medication requires immediate attention, Eldercare would provide a STAT run to the facility. This would eliminate gaps in the treatment of the clients at the Bay Pines Center. Eldercare delivers medications on a scheduled route six (6) evenings a week.

1.302 MINIMUM ORDER

There is no minimum order requirement for a delivery. There should never be any concerns on receiving re-orders or new prescriptions on a daily basis.

1.303 PACKAGING

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

Packaging of Dispensed Medications:

The Contractor shall create, maintain, and apply a BPC specific formulary for medications. The formulary shall be agreed upon by the Contractor and BPC's medical staff.

The Contractor shall fill all patient specific prescriptions in "blister pack" cards, providing accountability of drugs administered, security, and ease of storage. Prescription packages must be labeled to meet State and Federal labeling requirements.

Labels on the medications shall contain all of the following information: pharmacy name; prescription number; physician; fill date; expiration date; patient name; number; facility; pod/wing if requested; directions for use; medication name; medication strength; quantity dispensed; pharmacist initials; and initials of staff who processed the order.

A Medication Review Record (MAR) shall accompany each prescription package. The MAR shall contain the same information as the package label noted above for all medications for the youth. The new MAR shall replace the existing MAR and be used to record the administration of each dose of medication at the time it is administered.

The packaging system used at Eldercare is thirty (30) day "blister packs". The front of the blister pack shows the tablet/capsule. On the back of the blister pack shows the description of the medication; name, strength, expiration date, manufacturer, NDC number and initial of the technician who packaged the medication. The pharmacy label will show the pharmacy name, address, phone number, patient name, medication name and strength, date, refills, quantity, dispensed, facility name, room number, directions for use, doctor name, pharmacist initials, staff initials and two barcodes.

1.304 PALLETIZING –RESERVED

1.305 DELIVERY TERM

Prices shall be quoted "F.O.B. Delivered" to Bay Pines Center with transportation charges prepaid on all orders of one prescription or more to the State. Other F.O.B. terms will not be accepted and shall disqualify a bidder from further consideration. This supersedes Instruction #8 on the reverse side of the Invitation to Bid cover page.



Freight Charges - Should an agency order below the minimum order requirement of a Contract, or should a vendor quote F.O.B. Shipping Point on one-time purchases, the Contractor for shipping products must use one of the following carriers. Orders being shipped from or to in the State of Michigan or the States of Illinois, Indiana, Ohio, and Wisconsin, use Alvan Motor Freight (Tel: (800) 632-4172, attention Earl Batenburg); orders being shipped from or to ALL other states, use Roadway Express, Inc. (Tel: (800) 253-3193, attention David Lewis).

United Parcel Service (UPS) must be used in instances where the weight of the shipment is less than 150 lbs., or where shipments could be separated into smaller parcels such as three (3) 50 lb. packages. Also, if the shipment weighs less than 150 lbs, but costs \$3000 or more, it must be sent by the appropriate carrier listed above.

If the Contractor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Contractor's invoice for the amount that was charged and the amount that would have been charged if the requested carrier had been used.

1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

1.4 Project Price

1.401 PROPOSAL PRICING

Price for Prescription and Non-Prescription Drugs:

The Contractor shall compute prescription cost in the following manner:

AWP - discount + dispensing fee = prescription price

NOTE: AWP shall be based on the current published cost in the Red Book

Discount: 15.1% for Brand and 30% for Generic

Dispensing fee per prescription: \$2.75

Consultant pharmacist: \$65.00 per hour

Estimated 2 hours/quarter x 12 quarters = \$1,560.00 for 24 hours total

In-service training: No fee if Pharmacy related.

\$50.00 per hour if NOT Pharmacy related.

Additional Fee for STAT orders: \$0.00 – No fee

Credits

Bay Pines Center will be able to return medication as often as needed. Bay Pines will be able to return medications as often as needed subject to local, state and federal rules and regulations related to credits. The pharmacy credits daily upon return to promptly post credits on patient accounts, so the sooner Eldercare receives unused medication the better. However, the returns exclude any controlled substances being returned back to the pharmacy per State of Michigan law for credit or destruction.

STATE ADMINISTRATIVE FEE

The Contractor must collect an Administrative Fee on the sales transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The Administrative Fee equals 1% of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.



The Contractor must pay the Administrative Fee collected by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment:

Applicable State BPO Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Purchasing Operations
530 West Allegan St.
Lansing, MI 48933

Please make check payable to: Treasurer, State of Michigan

Eldercare agrees with the details noted above regarding the State Administrative Fee.

1.402 QUICK PAYMENT TERMS

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process.

Eldercare offers a prompt pay discount of: 2%, Net 10 days

1.403 PRICE TERM

Firm Fixed Price – Eldercare agrees unless the State of Michigan Medicaid Fee Schedule changes.

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

1.5 Quantity term

Requirements – Vendor agrees to supply all that the state requires.

Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for pharmacy services for Bay Pines Center for the State of Michigan. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Michigan Department of Human Services, hereinafter known as MDHS. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, and clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed contract administrator

All communications covering this procurement must be addressed to contract administrator indicated below:

**Department of Management and Budget
Purchasing Operations
Attn: Irene Pena, CPPB
Buyer Specialist
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 241-1647
*Penai1@michigan.gov***

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately August 20, 2008 through August 19, 2011.

Option. The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the



contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

Extension. At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

Written notice will be provided to the Contractor within 30 days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.



2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

2.008 HEADINGS

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

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.



2. The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

2.104 LIABILITY INSURANCE

A. Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

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

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



The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See www.michigan.gov/cis

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

- 1. Commercial General Liability with the following minimum coverage:
 - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit
 - \$500,000 Fire Damage Limit (any one fire)

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

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

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

- 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's



domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- 4. Employers liability insurance with the following minimum limits:
\$100,000 each accident
\$100,000 each employee by disease
\$500,000 aggregate disease
- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

B. Subcontractors

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



C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insured's, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) - RESERVED

2.106 PREVAILING WAGE

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

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

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



2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

2.108 COMPETITION IN SUB-CONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

2.109 CALL CENTER DISCLOSURE

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

2.110 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the



Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

2.111 LABOR RELATIONS

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to Section 2 of the Act. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

The Contractor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

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

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

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

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or



equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
- \$2,000,000 Products/Completed Operations Aggregate Limit
- \$1,000,000 Personal & Advertising Injury Limit
- \$1,000,000 Each Occurrence Limit
- \$500,000 Fire Damage Limit (any one fire)

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

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

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

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:

- \$100,000 each accident
- \$100,000 each employee by disease
- \$500,000 aggregate disease



- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed; to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar



insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

Contractor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 CONTRACT PAYMENT SCHEDULE

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

2.203 POSSIBLE PROGRESS PAYMENTS

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

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS - RESERVED

2.205 ELECTRONIC PAYMENT REQUIREMENT

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004 requires all payments be transitioned over to EFT by October 2005.

2.206 PERFORMANCE OF WORK BY CONTRACTOR - RESERVED

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

2.302 CONTRACTOR RESPONSIBILITIES

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



2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

Contractor must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that was provided in their bid.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its



subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;

5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Code Indemnification

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

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.



- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.



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

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 PURCHASING FROM OTHER STATE AGENCIES

State agencies are exempt from utilizing the resulting Contract if they would instead prefer to purchase similar items from the following State agencies:

- Michigan State Industries (MSI), which provides valuable training opportunities for inmates at State correctional facilities.
- Department of Management and Budget, Print and Graphics Services

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 60 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 RESERVED

2.313 RESERVED

2.314 WEBSITE INCORPORATION

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



2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations. The Contract Compliance Inspector for this project is:

Paul Walters
Business Manager
2425 North 30th Street
Escanaba, MI 49829

2.402 PERFORMANCE REVIEWS

Purchasing Operations in conjunction with the MDHS may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Purchasing Operations, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing Operations, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-**condition products to any State** agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

2.502 QUALITY ASSURANCE - RESERVED

2.503 INSPECTION - RESERVED

2.504 GENERAL WARRANTIES (goods)

Warranty of Merchantability – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and



packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

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

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

2.505 CONTRACTOR WARRANTIES

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.



12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 STAFF - RESERVED

2.507 RESERVED

2.508 EQUIPMENT WARRANTY - RESERVED

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.



2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.



In the event that this Contract is canceled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are canceled.

In the event this Contract is canceled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation for Convenience by the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are canceled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part



and may be immediate as of the date of the written notice to Contractor or may be effective **as of the date stated in such written notice.**

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

B. Termination Assistance

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractor's pricing section. If the Contract is terminated by Contractor under Section 20, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

C. Reservation of Rights

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

D. End of Contract Transition

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts shall include, but are not limited to, the following:

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



- (2) Knowledgeable Personnel. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.
 - (3) Information - The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.
 - (4) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.
 - (5) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
 - (6) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.
- E. Transition out of this Contract
- (1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
 - (i) Cooperating with any contractors, vendors, or other entities with whom the State contracts to meet its telecommunication needs, for at least two hundred and seventy (270) days after the termination of this Contract;
 - (ii) Reserved.
 - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
 - (iv) Reconciling all accounts between the State and the Contractor;
 - (v) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
 - (vi) Freezing all non-critical software changes;
 - (vii) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
 - (viii) Assisting with the communications network turnover, if applicable;
 - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
 - (x) Answering questions regarding post-migration services;



- (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
 - (i) Reconciling all accounts between the State and the Contractor;
 - (ii) Completing any pending post-project reviews.

2.703 LIQUIDATED DAMAGES - RESERVED

2.704 STOP WORK

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
 - a) Cancel the stop work order; or
 - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.



2.705 SUSPENSION OF WORK

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

2.803 MODIFICATION

Purchasing Operations reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.

**2.804 AUDIT AND RECORDS UPON MODIFICATION**

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

2.805 CHANGES

(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.