

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

December 19, 2007

**CHANGE NOTICE NO. 3**  
**TO**  
**CONTRACT NO. 071B4200227**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Stark &amp; Associates</b> <b>6109 Summer Woods Dr.</b> <b>Lake Oswego, OR 97035</b>  rjstark1@comcast.net	TELEPHONE: Russell Stark <b>(866) 388-5513</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1650 <b>Terry Harris</b>
Contract Compliance Inspector: Grazina Giroux (517) 373-3887 <b>Outsole Blockers - MSI</b>	
CONTRACT PERIOD: From: <b>May 1, 2004</b> To: <b>May 1, 2009</b>	
TERMS <b>2% Discount if invoice paid in 10 days</b>	SHIPMENT <b>30 Days ARO</b>
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>West Lebanon, N.H.</b>
MINIMUM DELIVERY REQUIREMENTS <b>4,000 Pairs of outsole Blockers</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

Effective immediately this Contract is EXTENDED for one year until May 1, 2009 and INCREASED \$600,000.00.

**AUTHORITY/REASON:**

Per Vendor Contact (Russ Stark) dated November 30, 2007, DMB/Purchasing Operations and Administrative Board approval on December 18, 2007.

Total REVISED Estimated Contract Value: \$1,683,000.00

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

December 7, 2006

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B4200227**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Stark &amp; Associates</b> <b>6109 Summer Woods Dr.</b> <b>Lake Oswego, OR 97035</b>  rjstark1@comcast.net	TELEPHONE: Russell Stark <b>(866) 388-5513</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1650 <b>Terry Harris</b>
Contract Compliance Inspector: Grazina Giroux (517) 373-3887 <b>Outsole Blockers - MSI</b>	
CONTRACT PERIOD: From: <b>May 1, 2004</b> To: <b>May 1, 2008</b>	
TERMS <b>2% Discount if invoice paid in 10 days</b>	SHIPMENT <b>30 Days ARO</b>
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>West Lebanon, N.H.</b>
MINIMUM DELIVERY REQUIREMENTS <b>4,000 Pairs of outsole Blockers</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

**Effective immediately this Contract is EXTENDED for one year until May 1, 2008 and INCREASED \$300,000.00. In addition the buyer has been changed to Terry Harris.**

**AUTHORITY/REASON:**

**Per Vendor Contact (Russ Stark) dated December 7, 2006, DMB/Purchasing Operations and Administrative Board approval on December 5, 2006.**

**Total REVISED Estimated Contract Value: \$1,083,000.00**

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

June 8, 2005

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B4200227**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF VENDOR  <b>Stark &amp; Associates</b> <b>6109 Summer Woods Dr.</b> <b>Lake Oswego, OR 97035</b>  rjstark1@comcast.net		TELEPHONE: Russell Stark <b>(866) 388-5513</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-4225 <b>Jennifer Hundt</b>
Contract Compliance Inspector: Grazina Giroux (517) 373-3887 <b>Outsole Blockers - MSI</b>		
CONTRACT PERIOD: From: <b>May 1, 2004</b> To: <b>May 1, 2007</b>		
TERMS <b>2% Discount if invoice paid in 10 days</b>	SHIPMENT <b>30 Days ARO</b>	
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>West Lebanon, N.H.</b>	
MINIMUM DELIVERY REQUIREMENTS <b>4,000 Pairs of outsole Blockers</b>		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

Effective June 7, 2005, the price for outsole blockers is increased to \$3.86 per pair.

Item	Unit	Description	Price
001	Pair	Outsole Blocker – Size 6	\$3.86
002	Pair	Outsole Blocker – Size 7	\$3.86
003	Pair	Outsole Blocker – Size 8	\$3.86
004	Pair	Outsole Blocker – Size 9	\$3.86
005	Pair	Outsole Blocker – Size 10	\$3.86
006	Pair	Outsole Blocker – Size 11	\$3.86
007	Pair	Outsole Blocker – Size 12	\$3.86
008	Pair	Outsole Blocker – Size 13	\$3.86
009	Pair	Outsole Blocker – Size 14	\$3.86
010	Pair	Outsole Blocker – Size 15	\$3.86

**AUTHORITY/REASON:**

Per Vendor Contact (Russ Stark) dated 4/27/05 and 5/31/05, DMB/Acquisition Services and Agency approval (Nancy Taylor-Williams) dated 5/23/05.

Total Estimated Contract Value Remains: \$783,000.00

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

April 28, 2004

NOTICE  
OF  
CONTRACT NO. 071B4200227  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>Stark &amp; Associates</b> <b>6109 Summer Woods Dr.</b> <b>Lake Oswego, OR 97035</b>	TELEPHONE: Russell Stark <b>(866) 388-5513</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-4225 <b>Jennifer Hundt</b>
Contract Compliance Inspector: Grazina Giroux (517) 373-3887 <b>Outsole Blockers - MSI</b>	
CONTRACT PERIOD: From: <b>May 1, 2004</b> To: <b>May 1, 2007</b>	
TERMS <b>2% Discount if invoice paid in 10 days</b>	SHIPMENT <b>30 Days ARO</b>
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>West Lebanon, N.H.</b>
MINIMUM DELIVERY REQUIREMENTS <b>4,000 Pairs of outsole Blockers</b>	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of ITB #07114001052 this Contract Agreement and the vendor's quote dated February 15, 2004. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$783,000.00**

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

**CONTRACT NO. 071B4200227**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF VENDOR  <b>Stark &amp; Associates</b> <b>6109 Summer Woods Dr.</b> <b>Lake Oswego, OR 97035</b>	TELEPHONE: Russell Stark <b>(866) 388-5513</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 241-4225 <b>Jennifer Hundt</b>
Contract Compliance Inspector: Grazina Giroux (517) 373-3887 <p style="text-align: center;"><b>Outsole Blockers - MSI</b></p>	
CONTRACT PERIOD: From: <b>May 1, 2004</b> To: <b>May 1, 2007</b>	
TERMS <b>2% Discount if invoice paid in 10 days</b>	SHIPMENT <b>30 Days ARO</b>
F.O.B. <p style="text-align: center;"><b>Delivered</b></p>	SHIPPED FROM <p style="text-align: center;"><b>West Lebanon, N.H.</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>4,000 Pairs of outsole Blockers</b></p>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of <a href="#">ITB #071I4001052</a> this Contract Agreement and the vendor's quote dated <a href="#">February 15, 2004</a>. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</b>	
<b>Estimated Contract Value: \$783,000.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No. 071I4001052](#). Orders for delivery of equipment will be issued directly by the [Department of Corrections, Michigan State Industries](#) through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

**FOR THE VENDOR:**

**Stark & Associates**

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

**FOR THE STATE:**

Signature

**William C. Walsh, CPPB**

Name

**Buyer/Manager, Tactical Purchasing**

Title

Date

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**SECTION I - REQUIREMENTS**

**I-A INTRODUCTION**

This Contract is for Outsole Blockers for Michigan State Industries.

The Contractor submitted a written proposals discussing how they met the below specific requirements.

**I-B REQUIRED INFORMATION**

**A. COMPANY INFORMATION**

**1. CAPABILITIES**

Stark and Associates  
6109 Summer Woods  
Lake Oswego, OR 97035

Phone: 866-388-5513 (toll free) or 503-635-2620  
Cell phone: 219-617-1522  
Fax: 503-635-2745  
E-mail: rjstark1@comcast.net

**2. STAFFING AND SUB-CONTRACTORS**

a) Key Staffing

Russell Stark, President, Stark and Associates  
MaryBeth Stark, Customer Service and Order Processing

b) Subcontractors:

John T. Ramian CPA,  
Financial and Accounting Services  
1506 Robin Lane  
Stow, OH 44224

SoleTech  
One Derby Square  
Salem, MA 01970  
Jim Ambrose, Warehouse and Manager  
Buzz Cutler, V.P. Operations  
Tom Costin, President



#### 4. SECURITY

This Contract may require frequent deliveries to State of Michigan facilities. If awarded the contract, all freight drivers must have a lien check before delivery to the facility. The Contractor is responsible for calling (517) 780-6302 to have the lien processed for all drivers prior to any deliveries. The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities.

#### 5. RECYCLING/ENVIRONMENTAL AWARENESS

Stark and Associates recycles all paper, plastic and aluminum that are consumed or used on sight.

### B. PRODUCT QUALITY

#### 1. SPECIFICATIONS

Definite Specifications - All commodities and/or services to be furnished hereunder shall conform to the specifications as noted in the Contract and/or copies of specifications attached.

1. Outsole Blockers shall be the following sizes: 6,7,8,9,10,11,12,13,14 & 15.
2. Outsole Blocker brand is SoleTech.
3. Outsole Blockers shall be pre-buffed.
4. Outsole blockers shall have either "oil resistant" printed on the bottom or a signed statement on company's letterhead verifying that the outsole blocker is oil resistant.
5. Color: Black
6. From toe to heel thickness shall be ½" thick; ball area between the toe and heel shall be ½" thick; heel shall be 1" thick (with the exception of the groove areas). Variances: Toe +/- 1/8"; Ball area between the toe and heel +/- 1/16"; Heel +/- 1/8".
7. Specific gravity: 31 +/- .03 G/CM3.
5. Oil Resistance: 9%.
8. Hardness: 66+/- SCALE C.
9. Tensile Strength: 35 +KG/CM2.
10. Elongation: 270
11. Tear Strength: 15 +KG/CM.
12. Abrasion (NBS): 100
13. Ross Flex: (-20C) 0 Cut Growth @7500 Flexes.

#### 2. QUALITY ASSURANCE PROGRAM

Each batch of uncured rubber is lab tested before molding. Each production run of soles is lab tested and every sole is visually inspected. The formula has been in production for over 5 years with very virtually no problems.



**3. WARRANTY/SERVICE**

Any defective soles can be returned for a full credit and/or replacement.

**C. SERVICE**

**1. ORDERING/CUSTOMER SERVICE**

Stark and Associates is capable of receiving orders via E-mail, Fax, or U.S. Mail.

E-mail: [rjstark1@comcast.net](mailto:rjstark1@comcast.net)  
Fax: 503-635-2745  
U.S. Mail: Stark and Associates  
6109 Summer Woods  
Lake Oswego, OR 97035

The Contractor shall have internal controls, approved by Acquisition Services, to insure that orders are placed by authorized individuals with the State. The Contractor shall verify orders which have quantities that appear to be abnormal or excessive.

The Contractor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Contractor shall have experienced sales representatives make timely personal visits to State accounts. The Contractor's customer service must respond to a State agency inquiries promptly. The Contractor shall provide a statewide toll-free number for customer service calls.

Toll free number: 866-388-5513

**2. REPORTING**

The Contractor shall be able to provide various reports, when requested by the State. Examples include itemized report of total items purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

**D. DELIVERY**

**1. TIME FRAMES**

Orders must be delivered within 30 calendar days after receipt of order.

**2. MINIMUM ORDER**

The minimum order is 4,000 pairs of any combination of outsole blocker sizes.



### 3. F.O.B. POINT

Prices are quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of 4,000 pairs of outsole blockers or more to the State.

Freight Charges - Should an agency order below the minimum order requirement of a Contract, one of the following carriers must be used by the Contractor for shipping products. 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 which was charged and the amount which would have been charged if the requested carrier had been used.

### 4. PACKAGING

The packaging is 24 outsole blocker pairs per box.

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.

### 5. PALLETIZING

Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturers standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.
- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.



**E. PRICING**

Item	Unit	Description	Price
001	Pair	Outsole Blocker- Size 6	\$3.48
002	Pair	Outsole Blocker- Size 7	\$3.48
003	Pair	Outsole Blocker- Size 8	\$3.48
004	Pair	Outsole Blocker- Size 9	\$3.48
005	Pair	Outsole Blocker- Size 10	\$3.48
006	Pair	Outsole Blocker- Size 11	\$3.48
007	Pair	Outsole Blocker- Size 12	\$3.48
008	Pair	Outsole Blocker- Size 13	\$3.48
009	Pair	Outsole Blocker- Size 14	\$3.48
010	Pair	Outsole Blocker- Size 15	\$3.48

**F. QUICK PAYMENT TERMS**

2% discount off invoice if paid within 10 days.



## SECTION II - GENERAL CONTRACT PROVISIONS

### II-A GENERAL

The Contract is for *Outsole Blockers* 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.

The Contract is a Unit Price Contract.

The "ship to" address for the participating agency is:

State of Michigan  
Michigan State Industries  
SPSM-Cent Comp-Shoe Factory – 1267  
1780 East Parnall Rd.  
Jackson, MI 49201

However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

### II-B ISSUING OFFICE

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the *Department of Corrections, Michigan State Industries*, hereinafter known as MSI. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

Acquisition Services 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. Acquisition Services is the only office authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process. All communications covering this procurement must be addressed to:

Department of Management and Budget  
Acquisition Services  
*Attn: Jennifer Hundt*  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
*(517) 241-4225*  
*Hundtj1@michigan.gov*

**II-C CONTRACT ADMINISTRATOR**

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

**Grazina Giroux**  
**Michigan State Industries**  
**Phone: (517) 373-3887**  
**Fax: (517) 373-6697**

**II-D CONTRACT TERM**

The term of this Contract will be 3 (three) years and will commence with the issuance of a Contract. This will be approximately *May 1, 2004* through *May 1, 2007*. At the sole option of the State, the Contract may be extended for up to 2 (two) additional years. Contractor performance, quality of products, price, 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 Acquisition Services to extend the Contract.

**II-E ORDER OF PRECEDENCE**

This contract supercedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

**II-F 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.

**II-G REVISIONS, CONSENTS, AND 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.

**II-H 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.

**II-I SURVIVOR**

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.



**II-J GOVERNING LAW**

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

**II-K RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR)**

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.

**II-L 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.

**II-M 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.

**II-N NEWS RELEASES**

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the ITB and Contract are to be released without prior written approval of the State and then only to persons designated.



## II-O 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.

## II-P PERFORMANCE REVIEWS

Acquisition Services in conjunction with the *MSI* 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 Acquisition Services, 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 Acquisition Services, 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.

## II-Q AUDIT OF CONTRACT COMPLIANCE

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.

## II-R SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.

**II-S WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT**

In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

**II-T ASSIGNMENT**

The Contractor shall not have the right to assign the Contract or to assign 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 Acquisition Services.

**II-U DELEGATION**

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 Acquisition Services has given written consent to the delegation.

**II-V DISCLOSURE**

All information in a bidder's proposal and the Contract is subject to the provisions of the Freedom of Information Act. 1976 Public Act No. 442, as amended, MCL 15.231, et seq.

**II-W TAXES**

- A. 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.
- B. 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.
- C. Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract. Also, bidders shall maintain appropriate payroll information on a system that can produce any reports that may be needed by Acquisition Services.



**II-X PRICE ADJUSTMENTS**

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Acquisition Services reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Acquisition Services also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

**II-Y ADDITIONAL PRODUCTS/SERVICES**

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 Acquisition Services.

**II-Z CONTRACTOR'S 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. The Contractor also agrees to provide evidence that all applicable insurance policies contain a waiver of subrogation by the insurance company.

All insurance coverages 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 herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the State.



The State reserves the right to reject insurance written by an insurer the State deems unacceptable.

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 ACQUISITION SERVICES, CERTIFICATE(S) OF INSURANCE VERIFYING INSURANCE COVERAGE. THE CERTIFICATE MUST BE ON THE STANDARD "ACCORD" FORM. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All such Certificate(s) are to be prepared and submitted by the Insurance Provider and not by the Contractor. All such 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 10 days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. Such NOTICE must include the CONTRACT NUMBER affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909.

The Contractor is required to provide the type and amount of insurance checked (☑) below:

- ☑ 1. Commercial General Liability with the following minimum coverages:

- \$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 policy.

- ☑ 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 policy.

- ☑ 3. Worker's disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) If coverage is provided by a State fund or if Contractor has qualified as a self-insurer, separate certification must be furnished that coverage is in the state fund or that Contractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. 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. For contracts providing temporary staff personnel to the State, the Contractor shall provide an Alternate Employer Endorsement with minimum coverage of \$1,000,000.
- 5. Employers liability insurance with the following minimum limits:
  - \$100,000 each accident
  - \$100,000 each employee by disease
  - \$500,000 aggregate disease

**II-AA INDEMNIFICATION**

A. 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.



**B. 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.

**C. 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 subclauses, 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 subclause.

**D. 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.

**II-BB CONTRACT DISTRIBUTION**

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

**II-CC 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.

**II-DD NON-DISCRIMINATION CLAUSE**

In the performance of a Contract or purchase order, 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 herefrom 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.

**II-EE 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 cancelled 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 cancelled.



In the event this Contract is cancelled 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 cancelled.
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.

**II-FF NOTICE AND 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.

**II-GG ELECTRONIC FUNDS TRANSFER**

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

**II-HH MODIFICATION OF CONTRACT**

Acquisition Services 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.**

**II-II UNFAIR LABOR PRACTICES**

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.

**II-JJ 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 the 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.



**II-KK CONTRACT PAYMENT SCHEDULE**

The specific payment schedule for the Contract(s) will be mutually agreed upon by the State and the Contractor(s). The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

**II-LL 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 Acquisition Services has approved a change.

**II-MM RECYCLED CONTAINERS**

The Contractor is encouraged to offer products packaged in containers using recovered materials suitable for the intended use. 'Recovered material' is defined as post-consumer waste (any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling, and disposition) and 'secondary waste' (industrial by-products and wastes generated after completion of a manufacturing process that would normally not be reused).

**II-NN RIGHT TO KNOW ACT (Act 80 of 1986)**

The "Right to Know Act" is intended to provide protection and information to employees who encounter hazardous substances in the workplace. To comply with this act, it is necessary that you fulfill the following:

Labels on all incoming containers of hazardous chemicals must (1) clearly State the identity of the contents, (2) display appropriate hazard warning(s), (3) include first aid information, and (4) list the name and address of the chemical manufacturer, importer, or other responsible party.

Material Safety Data Sheets must be included with shipment of chemical or hazardous material to the receiving State agency. It is necessary to send this document only on the first shipment for each chemical formulation or hazardous material ordered by a specific agency except when there has been a change in the formulation of the specified chemical or hazardous material, in which case, a revised material safety data sheet shall accompany the first shipment of the changed formulation. It is the responsibility of the shipping vendor to maintain this record. The receiving agency will not accept first shipment unless the above is complied with. It is recommended that OSHA Material Safety Data Sheet No. 174 be used.

**II-OO 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.

**II-PP QUALITY ASSURANCE**

The State reserves the right to periodically test products which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the Contractor shall be responsible for:

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.

**II-QQ INSPECTION**

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.