

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

August 11, 2008

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B5200046
(Supercedes Contract No. 071B7000550)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR IDEXX Distribution, Inc. One IDEXX Drive Westbrook, ME 04092 Vanessa-ray@idexx.com	TELEPHONE: Vanessa Ray (800) 321-0207 Ext. 4919
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1647 Irene Pena
Contract Compliance Inspector: Sandra Kerns Media Reagents/Test Kits – DEQ - Laboratory	
CONTRACT PERIOD: From: October 1, 2004 To: September 30, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby **EXTENDED** through **September 30, 2009** and **INCREASED \$28,000.00**.

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

AUTHORITY/REASON:

Per Administrative Board approval on August 5, 2009 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$629,164.00

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

May 14, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B5200046
 (Supercedes Contract No. 071B7000550)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR IDEXX Distribution, Inc. One IDEXX Drive Westbrook, ME 04092 Vanessa-ray@idexx.com	TELEPHONE: Vanessa Ray (800) 321-0207 Ext. 4919
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1647 Irene Pena
Contract Compliance Inspector: Sandra Kerns Media Reagents/Test Kits – DEQ - Laboratory	
CONTRACT PERIOD: From: October 1, 2004 To: September 30, 2008	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby INCREASED \$91,689.00

In Addition: The buyer for this Contract has been changed to Irene Pena

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

AUTHORITY/REASON:

Per Administrative Board approval on May 6, 2008 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$601,164.00

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

July 23, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B5200046
(Supercedes Contract No. 071B7000550)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR IDEXX Distribution, Inc. One IDEXX Drive Westbrook, ME 04092	TELEPHONE: Vanessa Ray (800) 321-0207 Ext. 4919
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 Lisa Morrison
Contract Compliance Inspector: Sandra Kerns Media Reagents/Test Kits – DEQ - Laboratory	
CONTRACT PERIOD: From: October 1, 2004 To: September 30, 2008	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED for one year. The new ending date for this Contract is September 30, 2008.

In Addition: The buyer for this Contract has been changed to Lisa Morrison.

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

AUTHORITY/REASON:

Per agency request via PRF dated June 7, 2007, vendor letter (David Jefferson) dated July 20, 2007 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$509,475.00

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

November 1, 2004

**NOTICE
TO
CONTRACT NO. 071B5200046**
(Supercedes Contract No. 071B7000550)
**between
THE STATE OF MICHIGAN
and**

NAME & ADDRESS OF VENDOR IDEXX Distribution, Inc. One IDEXX Drive Westbrook, ME 04092	TELEPHONE: Vanessa Ray (800) 321-0207 Ext. 4919
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8530 Kimberly Graham
Contract Compliance Inspector: Sandra Kerns Media Reagents/Test Kits – DEQ - Laboratory	
CONTRACT PERIOD: From: October 1, 2004 To: September 30, 2007	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

The terms and conditions of this Contract are those of [ITB #07114001291](#) this Contract Agreement and the vendor's quote dated [July 20, 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: **\$509,475.00**

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

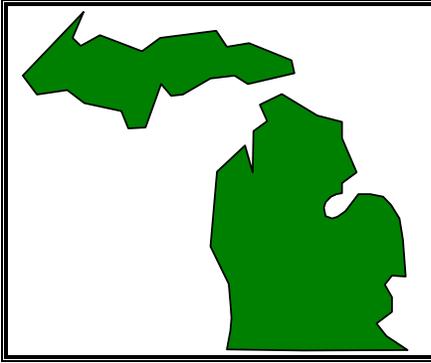
CONTRACT NO. 071B5200046
 (Supercedes Contract No. 071B7000550)
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR IDEXX Distribution, Inc. One IDEXX Drive Westbrook, ME 04092	TELEPHONE: Vanessa Ray (800) 321-0207 Ext. 4919 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-8530 Kimberly Graham
Contract Compliance Inspector: Sandra Kerns <p style="text-align: center;">Media Reagents/Test Kits – DEQ - Laboratory</p>	
CONTRACT PERIOD: From: October 1, 2004 To: September 30, 2007	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB #07114001291 this Contract Agreement and the vendor's quote dated July 20, 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: \$509,475.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No.07114001291](#). Orders for delivery of equipment will be issued directly by the [Department of Environmental Quality](#) 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: IDEXX Distribution, Inc. Firm Name	FOR THE STATE: Signature William C. Walsh, CPPB, Buyer Manager Name
Authorized Agent Signature	Tactical Purchasing, Acquisition Services Title
Authorized Agent (Print or Type)	Date
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract No. [071B5200046](#)
[DEQ – Reagents Water Testing Kits](#)

Buyer Name: Kimberly Graham, Buyer, CPPB
Telephone Number: [\(517\) 373-8530](#)
Fax: [\(517\) 335-0046](#)
E-Mail Address: grahamk@michigan.gov



Contract No. #071B5200046
DEQ – Reagents Water Testing Kits

Article1 – Statement of Work (SOW)	10
1.0 Introduction	10
1.001 DEFINING DOCUMENT	10
1.002 PROJECT TITLE AND DESCRIPTION	10
1.003 PROJECT CONTROL	10
1.004 COMMENCEMENT OF WORK.....	10
1.1 Product Quality.....	10
1.101 SPECIFICATIONS.....	10
1.102 RESEARCH AND DEVELOPMENT	10
1.103 QUALITY ASSURANCE PROGRAM	10
1.104 WARRANTY FOR PRODUCTS OR SERVICES	10
1.2 Service Capabilities.....	11
1.201 CUSTOMER SERVICE/ORDERING	11
1.202 TRAINING.....	11
1.203 REPORTING.....	11
1.204 SPECIAL PROGRAMS	11
1.205 SECURITY	12
1.3 Delivery Capabilities.....	12
1.301 TIME FRAMES	12
1.302 MINIMUM ORDER.....	12
1.303 PACKAGING	12
1.304 PALLETIZING	12
1.305 DELIVERY TERM.....	13
1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION	13
1.4 Project Price.....	13
1.401 PROPOSAL PRICING.....	13
1.402 QUICK PAYMENT TERMS	13
1.403 PRICE TERM.....	13
1.5 Quantity term.....	14
1.6 Specifications/Requirements	14
Article 2 – General Terms and Conditions	15
2.0 Introduction	15
2.001 GENERAL PURPOSE.....	15
2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR	15
2.003 NOTICE	15
2.004 CONTRACT TERM	16
2.005 GOVERNING LAW.....	16
2.006 APPLICABLE STATUTES.....	16
2.007 RELATIONSHIP OF THE PARTIES	17
2.008 HEADINGS.....	17
2.009 MERGER	17
2.010 SEVERABILITY.....	17
2.011 SURVIVORSHIP.....	17
2.012 NO WAIVER OF DEFAULT	17
2.013 PURCHASE ORDERS	17
2.1 Vendor/Contractor Obligations.....	18
2.101 ACCOUNTING RECORDS	18
2.102 NOTIFICATION OF OWNERSHIP	18
2.103 SOFTWARE COMPLIANCE	18
2.104 RESERVED	19
2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) RESERVED	19
2.106 PREVAILING WAGE.....	19
2.107 PAYROLL AND BASIC RECORDS.....	19
2.108 COMPETITION IN SUB-CONTRACTING.....	20
2.109 CALL CENTER DISCLOSURE.....	20



2.2	Contract Performance	20
2.201	TIME IS OF THE ESSENCE	20
2.202	CONTRACT PAYMENT SCHEDULE	20
2.203	POSSIBLE PROGRESS PAYMENTS	20
2.204	RESERVED POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)	20
2.205	ELECTRONIC PAYMENT AVAILABILITY	20
2.206	RESERVED PERFORMANCE OF WORK BY CONTRACTOR	20
2.3	Contract Rights and Obligations	20
2.301	INCURRING COSTS	20
2.302	CONTRACTOR RESPONSIBILITIES	21
2.303	ASSIGNMENT AND DELEGATION	21
2.304	TAXES	21
2.305	INDEMNIFICATION	21
2.306	LIMITATION OF LIABILITY	24
2.307	CONTRACT DISTRIBUTION	24
2.308	FORM, FUNCTION, AND UTILITY	24
2.309	ASSIGNMENT OF ANTITRUST CAUSE OF ACTION	24
2.310	PURCHASING FROM OTHER STATE AGENCIES	24
2.311	TRANSITION ASSISTANCE	24
2.312	RESERVED	24
2.313	RESERVED	24
2.314	WEBSITE INCORPORATION	25
2.4	Contract Review and Evaluation	25
2.401	CONTRACT COMPLIANCE INSPECTOR (CONTRACT ADMINISTRATOR)	25
2.402	PERFORMANCE REVIEWS	25
2.403	AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS	25
2.5	Quality and Warranties	25
2.501	PROHIBITED PRODUCTS	25
2.502	QUALITY ASSURANCE	26
2.503	INSPECTION	26
2.504	GENERAL WARRANTIES (goods)	26
2.505	CONTRACTOR WARRANTIES	26
2.506	STAFF	28
2.507	RESERVED	28
2.508	EQUIPMENT WARRANTY	28
2.509	RESERVED	28
2.6	Breach of Contract	28
2.601	BREACH DEFINED	28
2.602	NOTICE AND THE RIGHT TO CURE	29
2.603	EXCUSABLE FAILURE	29
2.7	Remedies	29
2.701	CANCELLATION	29
2.702	RIGHTS UPON CANCELLATION	31
2.703	RESERVED LIQUIDATED DAMAGES	31
2.704	RESERVED STOP WORK	31
2.705	RESERVED SUSPENSION OF WORK	31
2.8	Changes, Modifications, and Amendments	31
2.801	APPROVALS	31
2.802	TIME EXTENTIONS	31
2.803	MODIFICATION	31
2.804	AUDIT AND RECORDS UPON MODIFICATION	32
2.805	CHANGES	32
Article 3 – Certifications and Representations		33
3.1	Disclosure Issues	33
3.101	CONFIDENTIALITY	33
3.102	FREEDOM OF INFORMATION ACT	34
3.103	DISCLOSURE OF LITIGATION	34
3.2	Vendor/Contractor Compliance with Laws	35
3.201	GENERALLY	35



	3.204	CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT	36
	3.205	DEBARMENT OF SUB-CONTRACTORS	36
	3.206	ETHICS: GRATUITIES and INFLUENCE	36
3.3		Vendor/Contractor Workplace Fitness	37
	3.301	DRUG-FREE WORK PLACE	37
	3.302	WORKPLACE SAFETY	37
	3.303	WORKPLACE DISCRIMINATION	37
	3.304	LABOR RELATIONS	38
	3.305	RESERVED	38
	3.307	LIABILITY INSURANCE	38
	3.508	USE TAX	42
	3.509	TAX EXCLUDED FROM PRICE	42
	3.510	TAX PAYMENT	42
	3.511	USE OF OTHER SOURCES AS SUBCONTRACTORS	42
	3.512	UTILIZATION OF BUSINESS CONCERNS	43
	3.513	RESERVED	43
	3.514	RESERVED	43
	3.515	PLACE OF SUBCONTRACTING	43
	3.516	RESERVED	43
3.6		Changes to Disclosures	43
3.7		State Assertions	43

Attachments:

Product Quality/Specifications and MSDS Sheets
Item Listing



Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This document contains or incorporates defined requirements, the specifications and scope of work, and all contractual terms and conditions for this contractual agreement.

1.002 PROJECT TITLE AND DESCRIPTION

This is a Contract for Reagents/Water Test Kits/Laboratory Equipment. Article 1 is designed to provide the contractor with information on requirements associated with this contractual agreement.

1.003 PROJECT CONTROL

Project Control

- a. The Contractor will carry out this project under the direction and control of the Department of Environmental Quality.
- b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet monthly or as requested by the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.

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

Brand or trade names referred to herein are for identification purposes only, and do not limit the contractor to such brands, provided alternates offered are equal in quality and function to those specified. Descriptive literature that contains complete specifications or the complete specifications must be provided by the contractor and approved by DEQ and the buyer at Acquisition Services.

1.102 RESEARCH AND DEVELOPMENT

The contractor shall have the ability to invest in new product development and research to stay current with ongoing demands.

1.103 QUALITY ASSURANCE PROGRAM

The contractor shall have a Quality Assurance Program(s) that are currently in place within their organization.

1.104 WARRANTY FOR PRODUCTS OR SERVICES

The contractor shall provide all aspects of their warranty as stated in their proposal. This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the contract. The contractor shall handle any repairs that need to be made due to damaged or defective product. The contractor shall rectify installation problems, and provide the process State agencies should follow to report warranty issues.



1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

The contractor shall have the capacity to receive orders electronically, by phone, facsimile, email, and by written order. The Contractor shall provide a statewide toll-free phone number for phone orders. Contractor shall have internal controls, approved by Acquisition Services, to insure that authorized individuals with the State place orders. The Contractor shall verify orders that 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 State agency inquiries promptly. The Contractor shall provide a statewide toll-free number for customer service calls.

Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule.

All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.

Six telephone operators are available at IDEXX for orders:

800 Telephone Orders: 1-800-321-0207

Telephone orders accepted from 8:00 a.m. to 6:00 p.m. Eastern Standard Time.

**IDEXX Laboratories, Inc.
Attn: Vanessa Ray
One IDEXX Drive
Westbrook, ME 04092
Telephone: 800-321-0207 Ext. 4919
Fax: 207-856-0630
Email: Vanessa-ray@idexx.com**

1.202 TRAINING

The Contractor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Contractor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Contractor shall also provide agency training jointly with the State as needed during the period covered by the contract at no additional charge.

1.203 REPORTING

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

1.204 SPECIAL PROGRAMS

The State is interested in any other special programs the Contractor may have. Please discuss these programs, such as return policies, trade-in programs allowing the return of new product not needed, quantity discounts, etc.



1.205 SECURITY

This Contract may require frequent deliveries to State of Michigan facilities. The contractor shall take all measures utilized by their firm to ensure the security and safety of State office buildings. This shall include, but is not limited to, performance of security background checks on all personnel assigned to State of Michigan facilities (i.e. delivery people) and how they are performed, what the security check consists of, the name of the company that performs the security checks, use of uniforms and ID badges, etc. If security background checks are performed on staff, the Contractor may be required to provide the name of the company that performs the check as well as provide a document stating that each employee has satisfactorily completed a security check and is suitable for assignment to State facilities. Upon request by the State, the Contractor shall provide the results of all security background checks.

Once a contract is awarded, the State will decide whether to issue State ID badges to the contractor's delivery personnel or accept the ID badge issued to delivery personnel by the contractor.

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

IDEXX's standard delivery program is ground shipping via Federal Express with delivery within 3-5 business days from the date of receipt of order (ARO). EDEXX also has a quick-ship programs option by request that allows for 2nd day or overnight (am or pm) delivery. There are no quantity or other limitations for the quick-ship program.

1.302 MINIMUM ORDER

There will be no minimum order requirement for this contractual agreement.

1.303 PACKAGING

The contractor will be required to provide packaging that most closely meets these packaging sizes. The state reserves the right of final approval on packaging offered by the contractor.

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.

1.304 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.

**1.305 DELIVERY TERM**

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders to the State, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item Listing or second page of the ITB. 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**

Fixed Pricing see pricing clause for additional information.

1.402 QUICK PAYMENT TERMS

There are no quick payment terms offered for this contractual agreement.

1.403 PRICE TERM

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

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 THIRTY 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.



1.5 Quantity term

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

1.6 Specifications/Requirements

COLILERT MEDIA REAGENT TEST:

1. Methodology must be approved for total coliform testing by EPA.
2. Must be defined substrate technology.
3. Media must be for 100 mL sample.
4. Must be able to process by adding media directly into original sample container.
5. Must not require refrigeration.
6. Must have a minimum shelf life of one year from date of manufacture.
7. Must be packaged in easy open packs.
8. Must not require membrane filtration (MF).
9. Must allow for incubation at $35^{\circ} \pm 0.5^{\circ}\text{C}$.
10. **Must be able to read and confirm for total coliform (TC) and e. coli (EC) within 24 to 28 hours.**

COLISURE MEDIA REAGENT TEST:

1. Methodology must be approved for total coliform testing by EPA.
2. Must be defined substrate technology.
3. Media must be for 100 mL sample.
4. Must be able to process samples by adding media directly into original sample container.
5. Must not require refrigeration.
6. Must have a minimum shelf life of one year from date of manufacture.
7. Must be packaged in easy open packs.
8. Must not require membrane filtration (MF).
9. Must allow for incubation at $35^{\circ} \pm 0.5^{\circ}\text{C}$.
10. **Must be able to read and confirm for TC and EC within 24 to 48 hours.**

SimPlate MEDIA for HETEROTROPHIC PLACe COUNT (HPC)

1. Methodology must be approved for HPC testing by EPA.
2. Must be multiple enzyme technology.
3. Media must be for a 1 mL sample.
4. Must not require refrigeration.
5. Must allow for incubation at $35^{\circ} \pm 0.5^{\circ}\text{C}$.
6. Must be able to read for HPC within 48 – 72 hours



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

This Contract is for laboratory equipment and supplies for reagent media specifications for coliform testing and heterotrophic plate count 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.

Indicated on the Purchase Order Contract Release Form is the "ship to" address for the participating agency. However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Department of Environmental Quality (DEQ), Lab Services Section, hereinafter known as *DEQ, Lab Services*. 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 negotiate, 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.

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 Acquisition Services.

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

Department of Management and Budget
Acquisition Services
Attn: Kimberly Graham, Buyer, CPPB
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 373-8530 – Telephone
(517) 335-0046 - Fax
grahamk@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 October 1, 2004 through September 30, 2007.

Option. The State reserves the right to exercise two (2), one-year extension 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 Acquisition Services 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 Acquisition Services to exercise an option year.

Written notice will be provided to the Contractor within 60 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 (CWHSSA) 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.

Acquisition Services has given the State Departments approval to make payments for commodities and services purchased from this contract through Direct Voucher. For this reason, the Contractor may be asked to reference the Blanket Purchase Order/Contract number rather than a Purchase Order Number when invoicing 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 Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services 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 Acquisition Services 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 RESERVED****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

Contractor 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.

2.2 Contract Performance**2.201 TIME IS OF THE ESSENCE**

Contractor/Vendor 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 commodities shipped and received with order. 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 Acquisition Services, Department of Management & Budget. This activity will occur only upon the specific written direction from Acquisition Services. As a general policy invoice statements shall be forwarded to the designated representative by the 15th day of the following month.

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 RESERVED POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)**2.205 ELECTRONIC PAYMENT AVAILABILITY**

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.

2.206 RESERVED PERFORMANCE OF WORK BY CONTRACTOR**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 Acquisition Services.

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.

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the 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**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (*for low risk contracts – Select a higher amount for moderate to high risk contracts*) which ever is higher. The foregoing limitation of liability 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

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.

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 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.

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 (CONTRACT ADMINISTRATOR)

Upon receipt at Acquisition Services 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 Acquisition Services.** The Contract Compliance Inspector for this project is:

Sandra Kerns, Unit Chief
Department of Environmental Quality
Drinking Water Unit
525 West Allegan Street
Lansing, MI 48909-7973
Telephone: (517) 335-8076
Email: kerns@michigan.gov

2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with the Department of Environmental Quality, Laboratory Services Section 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.

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 Acquisition Services has approved a change.



2.502 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.

2.503 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.

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**

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

2.507 RESERVED**2.508 EQUIPMENT WARRANTY**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within three (3) business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

All warranty work shall be performed on the State of Michigan worksite(s).

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 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.



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.

2.703 RESERVED LIQUIDATED DAMAGES

2.704 RESERVED STOP WORK

2.705 RESERVED SUSPENSION OF WORK

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

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.**

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.



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 Acquisition Services. 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.



Article 3 – Certifications and Representations

3.1 Disclosure Issues

3.101 CONFIDENTIALITY

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, “Confidential Information” of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, proprietary, or with a similar designation. “Confidential Information” of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State “Confidential Information” shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent its closing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been

advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

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.



Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

Destruction of Confidential Information

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

3.102 FREEDOM OF INFORMATION ACT

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

3.103 DISCLOSURE OF LITIGATION

The Contractor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.



The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years preceding its bid proposal, or which may occur during the term of this Contract or three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim in excess of \$250,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

All notices under subsection 1 and 2 herein shall be provided in writing to the State within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.

Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a. The ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b. Whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then

The Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

*** The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

3.2 Vendor/Contractor Compliance with Laws

3.201 GENERALLY

Contractor/vendor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this agreement or that in any manner affects the conduct of the work done under this agreement. Contractor shall observe and comply with such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall indemnify the state for any civil claim or liabilities arising from a violation of such laws, ordinances, rules, regulations, orders, or decrees, whether by itself or its employees, even if wholly or in part caused by a violation of such laws, ordinances, rules, regulations, orders, or decrees by the state or its agents or representatives.

**3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT**

- 1) Principals for purposes of section 3.203(9) means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity
- 2) The supplier shall provide immediate written notice to the state if, at any time before the purchase award, the supplier learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances
- 3) A certification that any of the items in paragraph 3.203(9)(A) of this provision exists will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the supplier's responsibility. Failure to furnish the certification or provide such information as requested by the state may render the supplier non-responsive
- 4) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 3.203(9)(a) of this provision. The knowledge and information of a supplier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.
- 5) If it is later determined that supplier knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, the state may terminate this purchase for default.

VENDOR CAN REVIEW THE STATE'S DEBARMENT POLICY AT: www.michigan.gov/doingbusiness
(click on the link to Debarment Policy)

3.205 DEBARMENT OF SUB-CONTRACTORS

Contractor shall require each primary sub-contractor, whose sub contract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of the award of the sub contract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the State of Michigan. The contractor shall then inform the state of the sub-contractor's status and reasons for contractor's decision to use such sub-contractor, if contractor so decides.

3.206 ETHICS: GRATUITIES and INFLUENCE**Gratuities**

The right of the contractor to proceed may be terminated by written notice, if the contracting agency head or contract administrator determines that the contractor, its agent, or its representative has offered or gave a gratuity, kickback, money, gift, or any thing of value to an officer, official, or employee of the state intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

Influence

The vendor/contractor by signing its proposal/bid hereby certifies to best of his or her knowledge that no funds have been given to any state officer, official, or employee for influencing or attempting to influence such officer, official, or employee of the state.



3.3 Vendor/Contractor Workplace Fitness

3.301 DRUG-FREE WORK PLACE

The vendor/contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the vendor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the work place; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; and
- D. Notifying the contracting state agency with in 15 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within 30 days after receiving notice under subdivision (C)(2), imposing the proper sanctions as communicated to the employee through the statement required by subparagraph (A); and
- F. Making a good-faith effort to maintain a drug-free work place through the implementation of sub paragraphs (A) through (E) above.

3.302 WORKPLACE SAFETY

1. 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.
2. 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.

3.303 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.

3.304 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.

3.305 RESERVED

3.307 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 Acquisition Services, 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 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 Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, 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 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 Acquisition Services 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, 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.

3.308 ENVIRONMENTAL AWARENESS RESERVED

- (1) The apparently successful bidder agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.
- (2) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (3) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (4) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (5) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
 - (c) The Government is not precluded from using similar or identical data acquired from other sources.



3.508 USE TAX

Companies (and their affiliated organizations) that are awarded contracts are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services **delivered into the state of Michigan**. This is required of all companies that are awarded contracts. Those companies that lack sufficient “presence” in Michigan to be required to register and pay tax must do so as a “**volunteer**”. This requirement extends to: (1) ALL MEMBERS OF ANY CONTROLLED GROUP AS DEFINED IN § 1563(A) OF THE Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make **sales at retail for delivery into the state of Michigan** are registered with the State of Michigan for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

The requirement of remittance could be limited to the bidder only without including affiliate companies.

Contractors and their affiliates as defined in the paragraph above must register for and remit sales and use tax on all taxable sales of tangible personal property or services **delivered to the state of Michigan**.

3.509 TAX EXCLUDED FROM PRICE

Contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

3.510 TAX PAYMENT

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract.

The State may refuse to award a contract to any vendor who has failed to pay any applicable state taxes. The State may refuse to accept vendor’s bid, if vendor has any outstanding debt with the State of Michigan. Prior to any award, the State will verify whether vendor has any outstanding debt with the State.

Vendor hereby certifies that all applicable state taxes are paid as of the date of bid submission, and that vendor owes no outstanding debt to the State of Michigan.

3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS

The State has sources of supply and services that are mandatory. The state may use the information provided under this section and 3.502 and 3.503 in determining future awards and vendor standing with the state.

(1) Persons with disabilities

See Paragraph 3.502 for definition and penalty for fraudulent represents this information.

(2) Community Rehabilitation Organizations (CRO) (formerly sheltered workshops)

See Paragraph 3.503 for definition.



3.512 UTILIZATION OF BUSINESS CONCERNS

It is the policy of the State of Michigan that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, small disadvantaged business concerns, minority-owned small business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any state agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the State of Michigan or the awarding agency of the State of Michigan as may be necessary to determine the extent of the Contractor's compliance with this clause.

3.513 RESERVED

3.514 RESERVED

3.515 PLACE OF SUBCONTRACTING

There will be no subcontractors for this contractual agreement.

3.516 RESERVED

3.6 Changes to Disclosures

If any of the certifications, representations, or disclosures indicated in this document change after awarding of a contract, the Contractor is required to report those changes immediately to the Department of Management and Budget, Acquisition Services.

3.7 State Assertions

If the state finds that grounds to debar exist, it shall send notice to the vendor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the vendor does not respond with a written request for a hearing within twenty (20) calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight (8) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process. Authority given by Executive Order 2003-1.

ANY FALSE CERTIFICATION OF ANY OF THE PRECEEDING PROVISIONS IS GROUNDS FOR DEBARMENT AND WILL GIVE THE STATE THE RIGHT TO INVOKE ALL REMEDIES AVAILBLE TO IT UNDER THIS CONTRACT.



ITEM PRICING SHEET
DEQ – Reagents Water Testing Kits

Item	Commodity ID	3 yr. Est. Qty	U/M	Description	# Per Pack/# Per Case/Amount
001	193-36-42-6507	915	PK	<p>Reagent, bacteriological analysis, colilert, presence/absence for 100 ML/PKG., for testing drinking water for coliform.</p> <p>#WP200 – Colilert water reagent test kit, 200/PK Read 24-28 hours or acceptable alternate.</p> <p>Note: Products must be all one lot number with the latest outdate for each order placed.</p>	<p># Per Pack: <u>\$525.00</u></p> <p># Per Case: <u>N/A</u></p> <p>Price/Pack: <u>\$525.00</u></p>
002	193-36-42-6754	40	PK	<p>Reagent, colisure, 35 degree incubation, reading between 24-48 hours, F/Bacteriological analysis in water, 200/Snap package.</p> <p>#WCLS200 – Colisure water reagent test kit, 200/PK Read 24-28 hours or acceptable alternate.</p> <p>Note: Products must be all one lot number with the latest outdate for each order.</p>	<p># Per Pack: <u>\$525.00</u></p> <p># Per Case: <u>N/A</u></p> <p>Price/Pack: <u>\$525.00</u></p>
003	495-LS	36	PK	<p>Simplate for heterotrophic plate count, Read 48-72 Hours.</p> <p>#WHPC-100 – Simplate for heterotrophic plate count, 100/PK Read 48-72 hours or acceptable alternate.</p> <p>Note: Products must be all one lot number with the latest outdate for each order.</p>	<p># Per Pack: <u>\$225.00</u></p> <p># Per Case: <u>N/A</u></p> <p>Price/Pack: <u>\$225.00</u></p>



1.1 Product Quality

1.101 SPECIFICATIONS

Complete specifications for all IDEXX products submitted in this bid are attached in Exhibit A – IDEXX Product Specifications.

Below is a point-by-point explanation of how IDEXX reagents meet the Specification/Requirements section of Michigan's Invitation to Bid for water testing kits.

COLILERT MEDIA REAGENT TEST:

Invitation to Bid Specifications	Does IDEXX Colilert meet this spec?	Justification
1. Methodology must be approved for total coliform testing by EPA.	Yes	The US EPA approved Colilert in 1989 for total coliform analysis and in 1992 for the analysis of <i>E. coli</i> .
2. Must be defined substrate technology.	Yes	Colilert is a Defined Substrate Technology [®] reagent for the detection of coliforms and <i>E. coli</i> . IDEXX is the sole owner of Defined Substrate Technology and no other manufacturer has license to this technology.
3. Media must be for 100 mL sample.	Yes	Colilert reagent is prepackaged for 100mL samples.
4. Must be able to process by adding media directly into original sample container.	Yes	Colilert tests are run by snapping open blister packs and releasing reagent directly into sample container.
5. Must not require refrigeration.	Yes	Colilert can be stored between 2-30°C. Refrigeration is not required.
6. Must have a minimum shelf life of one year from date of manufacture.	Yes	Colilert reagent has 12 months dating from date of manufacture.
7. Must be packaged in easy open packs.	Yes	Colilert reagent has been packaged in easy to open blister packs since 1992.
8. Must not require membrane filtration (MF).	Yes	Colilert is run in a 100mL presence / absence format and does not require any filtration.
9. Must allow for incubation at 35° ± 0.5°C.	Yes	Colilert incubation specifications are 35°±0.5°C.
10. Must be able to read and confirm for total coliform (TC) and <i>E. coli</i> (EC) within 24 to 28 hours.	Yes	Colilert results are complete between 24 and 28 hours and require no confirmation steps.



COLISURE MEDIA REAGENT TEST:

Invitation to Bid Specifications	Does IDEXX Colisure meet this spec?	Justification
1. Methodology must be approved for total coliform testing by EPA.	Yes	Colisure is US EPA approved for the detection of total coliforms and <i>E. coli</i> in drinking water.
2. Must be defined substrate technology.	Yes	Colisure is a Defined Substrate Technology [®] reagent for the detection of coliforms and <i>E. coli</i> . IDEXX is the sole owner of Defined Substrate Technology and no other manufacturer has license to this technology.
3. Media must be for 100 mL sample.	Yes	Colisure reagent is pre-packaged for 100mL samples.
4. Must be able to process samples by adding media directly into original sample container.	Yes	Colisure tests are run by snapping open blister packs and releasing reagent directly into the original sample container.
5. Must not require refrigeration.	Yes	Colisure can be stored between 2-25°C. Refrigeration is not required.
6. Must have a minimum shelf life of one year from date of manufacture.	Yes	Colisure reagent has 12 months dating from date of manufacture.
7. Must be packaged in easy open packs.	Yes	Colisure reagent has been packaged in easy to open blister packs since 1998.
8. Must not require membrane filtration (MF).	Yes	Colisure is run in a 100mL presence / absence format and does not require any filtration.
9. Must allow for incubation at 35° ± 0.5°C.	Yes	Colisure incubation specifications are 35°±0.5°C.
10. Must be able to read and confirm for TC and EC within 24 to 48 hours.	Yes	Colisure results are complete between 24 and 48 hours and require no confirmation steps.

SimPlate MEDIA for HETEROTROPHIC PLACE COUNT (HPC)

Invitation to Bid Specifications	Does IDEXX SimPlate for HPC meet this specification?	Justification
1. Methodology must be approved for HPC testing by EPA.	Yes	SimPlate is US EPA-approved for HPC analysis in drinking water.
2. Must be multiple enzyme technology.	Yes	SimPlate for HPC is a Multiple Enzyme Technology [®] reagent for HPC analysis. IDEXX is the sole owner of Multiple Enzyme Technology for drinking water testing.
3. Media must be for a 1 mL sample	Yes	The SimPlate test can be run in 1mL or 10mL formats.
4. Must not require refrigeration.	Yes	SimPlate media can be stored between 4-30°C. Refrigeration is not required.
5. Must allow for incubation at 35° ± 0.5°C.	Yes	SimPlate incubation specifications are 35°±0.5°C.
6. Must be able to read for HPC within 48 – 72 hours.	Yes	SimPlate results can be read any time between 45 and 72 hours.



Exhibit A

IDEXX Product Specifications:

Colilert - Catalog # WP200 has 200 tests per box, WP020 has 20 tests per box.

1. Defined Substrate Technology® (DST®) reagent using ONPG-MUG for the simultaneous detection of total coliforms and *E. coli* in 24 hours.
2. US EPA-approved for drinking water, source water, and other ambient waters in presence/absence and quantification testing formats.
3. Included in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, for both presence/absence and quantification testing formats.
4. Change from clear to yellow indicates a confirmed positive for coliforms. Yellow and fluorescence indicate a confirmed positive for *E. coli*. No further confirmation is required.
5. Detects 1 total coliform or *E. coli* in a 100ml sample. This accuracy ensures maximum public health protection and conforms to EPA regulations.
6. Pre-measured, free flowing and rapidly dissolving powder in a blister pack.
7. For use in either disposable or reusable vessels, or with Quanti-Tray and Quanti-Tray/2000 for bacterial quantification. This flexibility allows reagent to be used in presence/absence and quantification testing.
8. Results can be read anytime between 24-28 hours.
9. Tests must be incubated at 35°C ± 0.5°C
10. Shelf life up to 12 months at room temperature from date of manufacture.
11. Provides completed results, without the need for a confirmation step. This ensures rapid, accurate results without exposing the lab to additional contamination from positive samples or risks associated with the storage of hazardous chemicals such as Kovac's Reagent.



Colisure - Catalog # WCS200 has 200 tests per box, WCLS020 has 20 tests per box.

1. Defined Substrate Technology® (DST®) reagent using CPRG-MUG for the simultaneous detection of total coliforms and *E. coli* in 24-48 hours. A 24-48 hour read window allows labs maximum flexibility in running and reading samples.
2. US EPA-approved for drinking water and source water in presence/absence and quantification testing formats.
3. Included in *Standard Methods for the Examination of Water and Wastewater, 20th Edition*, for both presence/absence and quantification testing formats.
4. Change from yellow to magenta indicates a confirmed positive for coliforms. Magenta and fluorescence indicates a confirmed positive for *E. coli*. No further confirmation is required.
5. Detects 1 total coliform or *E. coli* in a 100ml sample.
6. Pre-measured, free flowing and rapidly dissolving powder in a blister pack.
7. For use in either disposable or reusable vessels, or with Quanti-Tray and Quanti-Tray/2000 for bacterial quantification.
8. Results can be read anytime between 24-48 hours.
9. Tests must be incubated at 35°C ± 0.5°C
10. Shelf life up to 12 months at room temperature from date of manufacture.
11. Provides completed results, without the need for a confirmation step.



SimPlate for HPC - Catalog # WHPC-100 has 100 SimPlates and ten 10-test media vessels, WHPC-25 has 25 SimPlates and 25 unit dosed media tubes.

1. US EPA approved method for compliance HPC testing. Sterile, pre-measured, dry blended media can be reconstituted with sterile water or sample. Does not require any media measuring, pH adjustment, or sterilization.
2. Correlates with Pour Plate Method, using plate count agar incubated for 48 hours at 35°C. Results match standard methods without all of the media preparation and test set-up.
3. Provides MPN results up to 739 per plate without the need for dilutions.
4. Positive wells are easily detected with a UV lamp. Spreader colonies and pin point colonies are eliminated to facilitate counting.



MANUFACTURER: IDEXX LABORATORIES, INC. PHONE: (207) 856-0300

MATERIAL SAFETY DATA SHEET: COLILERT PAGE 1 OF 2

CO NO. 13795 REVISION NO. B EFFECTIVE DATE: 3/18/03

Section 1. Chemical Product and Company Identification

Product Catalog No. WP200, WP020, W050, W050B, W100, W200, WB100

Trade Name Colilert®
Medium for the simultaneous detection of total coliforms and *E.coli*

Manufacturer IDEXX Laboratories, Inc
One IDEXX Drive
Westbrook, ME 04092 USA
1-800-321-0207, 1-207-856-0496 (US)
00-800- 4339-9111 (Europe)
www.idexx.com/water

Section 2. Composition, Information on Ingredients

Component Not classified as hazardous within the meaning of Directive 67/548/EEC

Section 3. Hazards Identification

Most Important Hazards Not classified as hazardous

Section 4. First Aid Measures

First Aid - Eyes Wash out eyes with plenty of water
Skin Wash skin with soap and water
Ingestion Wash out mouth with water. Drink 1-3 glasses of water to dilute stomach contents. Seek medical attention
Inhalation Remove to fresh air

Section 5. Fire Fighting Measures

Extinguishing Media Water spray, carbon dioxide, dry chemical powder or foam

Section 6. Accidental Release Measures

Personal Precautions Wear appropriate protective clothing
Spill Sweep into a container for disposal

Section 7. Handling and Storage

Handling Avoid contact with eyes, skin and inhalation of dust
Store at 2-30°C
Handle product as typical with all other reagents

4/21/03



MANUFACTURER: IDEXX LABORATORIES, INC.

PHONE: (207) 856-0300

MATERIAL SAFETY DATA SHEET:

COLILERT

PAGE 2 OF 2

CO NO. 13795

REVISION NO. B

EFFECTIVE DATE: 3/18/03

Section 8. Exposure Controls, Personal Protection

Protective measures- body	Following protection is recommended: Lab coat
Protective measures -hands	Vinyl (disposable) gloves
Protective measures- eyes	Safety glasses
Respiratory	Dust mask if conditions are dusty
Hygienic Practices	Wash hands after using

Section 9. Physical and Chemical Properties

Physical State	Fine powder and/or a granulated powder
pH	7.2 - 7.4 when dissolved in 100 ml of water
Color	Off white
Water Solubility	Soluble

Section 10. Stability and Reactivity

Stability	Product is stable until expiration date printed on product
Reactivity	Hazardous polymerization will not occur

Section 11. Toxicology Information

Acute Toxicity	No data available
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Section 12. Ecological Information

Ecotoxicity	No relevant studies identified
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Section 13. Disposal Considerations

Disposal Considerations	Dispose of in accordance with all applicable local, state and national regulations.
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Section 14. Transport Information

UN: UN Number	Not classified, No special precautions required
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Section 15. Regulatory Information

Risk Phrases	Not applicable
EC consideration	Not classified

Section 16. Other Information

MSDS First Issued	June 4, 1990 The information provided is in the interest of promoting safe handling of the product. While this information is believed to be correct, IDEXX Laboratories makes no warranty in respect to any of the information disclosed.
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4/21/03



MANUFACTURER: IDEXX LABORATORIES, INC.

MATERIAL SAFETY DATA SHEET: SimPlate® for HPC

PAGE 1 OF 3

CO NO. 14223

REVISION NO. A

EFFECTIVE DATE: 9/18/03

Section 1. Chemical Product and Company Identification

Product Catalog No.	WHPC-100 (100 tests, Multi Dose) WHPC-25 (25 tests, Single Dose)
Trade Name	SimPlate® for HPC
Manufacturer	Medium for the detection of heterotrophic bacteria IDEXX Laboratories, Inc One IDEXX Drive Westbrook, ME 04092 USA 1-800-321-0207, 1-207-856-0496 (US) 00-800- 4339-9111(Europe) www.idexx.com/water

Section 2. Composition, Information on Ingredients

Component	Not classified as hazardous within the meaning of Directive 67/548/EEC
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Section 3. Hazards Identification

Most Important Hazards	Not classified as hazardous
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Section 4. First Aid Measures

First Aid - Eyes	Wash out eyes with plenty of water
Skin	Wash skin with soap and water
Ingestion	Wash out mouth with water. Drink 1-3 glasses of water to dilute stomach contents. Seek medical attention
Inhalation	Remove to fresh air

Section 5. Fire Fighting Measures

Extinguishing Media	Water spray, carbon dioxide, dry chemical powder or foam
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Section 6. Accidental Release Measures

Personal Precautions	Wear appropriate protective clothing
Spill	Sweep into a container for disposal

Section 7. Handling and Storage

Handling	Avoid contact with eyes, skin and inhalation of dust. Store at 2-30°C. Handle product as typical with all other reagents
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MANUFACTURER: IDEXX LABORATORIES, INC.

MATERIAL SAFETY DATA SHEET: SimPlate® for HPC

PAGE 2 OF 3

CO NO. 14223

REVISION NO. A

EFFECTIVE DATE: 9/18/03

Section 8. Exposure Controls, Personal Protection

	The following protection is recommended
Protective measures- body	Lab coat
Protective measures -hands	Vinyl (disposable) gloves
Protective measures- eyes	Safety glasses
Respiratory	Dust mask if conditions are dusty
Hygienic Practices	Wash hands after using

Section 9. Physical and Chemical Properties

Physical State	Powder
pH	6.7-7.3, when dissolved in 100 ml of water
Color	Yellowish
Water Solubility	Soluble

Section 10. Stability and Reactivity

Stability	Product is stable until expiration date printed on product.
Reactivity	Hazardous polymerization will not occur

Section 11. Toxicology Information

Acute Toxicity	No data available
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Section 12. Ecological Information

Ecotoxicity	No relevant studies identified
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Section 13. Disposal Considerations

Disposal Considerations	Dispose of in accordance with all applicable local, state and national regulations.
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Section 14. Transport Information

UN: UN Number	Not classified
	No special precautions required.

Section 15. Regulatory Information

Risk Phrases	Not applicable
EC consideration	Not classified



MANUFACTURER: IDEXX LABORATORIES, INC.

MATERIAL SAFETY DATA SHEET: SimPlate® for HPC

PAGE 3 OF 3

CO NO. 14223

REVISION NO. A

EFFECTIVE DATE: 9/18/03

Section 16. Other Information

MSDS First Issued

May 18th, 1995

The information provided is in the interest of promoting safe handling of the product. While this information is believed to be correct, IDEXX Laboratories makes no warranty in respect to any of the information disclosed





MANUFACTURER: IDEXX LABORATORIES, INC.

MATERIAL SAFETY DATA SHEET: COLISURE®

PAGE 1 OF 3

CO NO. 14223

REVISION NO. A

EFFECTIVE DATE: 9/18/03

Section 1. Chemical Product and Company Identification

Product Catalog No.	WCLS 020 (20 packets), WCLS 200 (200 packets)
Trade Name	Colisure®
Manufacturer	Medium for the simultaneous detection of total coliforms & <i>E.coli</i> IDEXX Laboratories, Inc. One IDEXX Drive Westbrook, ME 04092 USA 1-800-321-0207, 1-207-856-0496 (US) 00-800- 4339-9111(Europe) www.idexx.com/water

Section 2. Composition, Information on Ingredients

Component	Not classified as hazardous within the meaning of Directive 67/548/EEC
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Section 3. Hazards Identification

Most Important Hazards	Not classified as hazardous
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Section 4. First Aid Measures

First Aid - Eyes	Wash out eyes with plenty of water
Skin	Wash skin with soap and water
Ingestion	Wash out mouth with water. Drink 1-3 glasses of water to dilute stomach contents. Seek medical attention
Inhalation	Remove to fresh air

Section 5. Fire Fighting Measures

Extinguishing Media	Water spray, carbon dioxide, dry chemical powder or foam
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Section 6. Accidental Release Measures

Personal Precautions	Wear appropriate protective clothing
Spill	Sweep into a container for disposal

Section 7. Handling and Storage

Handling	Avoid contact with eyes, skin and inhalation of dust. Store at 2-25°C. Handle product as typical with all other reagents
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MANUFACTURER: IDEXX LABORATORIES, INC.

MATERIAL SAFETY DATA SHEET: COLISURE®

PAGE 2 OF 3

CO NO. 14223

REVISION NO. A

EFFECTIVE DATE: 9/18/03

Section 8. Exposure Controls, Personal Protection

	The following protection is recommended:
Protective measures- body	Lab coat
Protective measures -hands	Vinyl (disposable) gloves
Protective measures- eyes	Safety glasses
Respiratory	Dust mask if conditions are dusty
Hygienic Practices	Wash hands after using

Section 9. Physical and Chemical Properties

Physical State	Granulated powder
pH	7.2 - 7.4, when dissolved in 100 ml of water
Color	Tan
Water Solubility	Mostly soluble, with some of the power not dissolving

Section 10. Stability and Reactivity

Stability	Product is stable until expiration date printed on product.
Reactivity	Hazardous polymerization will not occur

Section 11. Toxicology Information

Acute Toxicity	No data available
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Section 12. Ecological Information

Ecotoxicity	No relevant studies identified
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Section 13. Disposal Considerations

Disposal Considerations	Dispose of in accordance with all applicable local, state and national regulations.
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Section 14. Transport Information

UN: UN Number	Not classified
	No special precautions required.

Section 15. Regulatory Information

Risk Phrases	Not applicable
EC consideration	Not classified



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MATERIAL SAFETY DATA SHEET: COLISURE®

PAGE 3 OF 3

CO NO. 14223

REVISION NO. A

EFFECTIVE DATE: 9/18/03

Section 16. Other Information

MSDS First Issued

May 18th, 1995

The information provided is in the interest of promoting safe handling of the product. While this information is believed to be correct, IDEXX Laboratories makes no warranty in respect to any of the information disclosed

