

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

March 1, 2011

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B8200102
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (269) 274-2656
Gwen, Inc. d.b.a. Battle Creek Hunt Club Catering 544 West Columbia, Suite B Battle Creek, MI 49015 Drake544@gmail.com		Tony Drake
		CONTRACTOR NUMBER/MAIL CODE
Contract Compliance Inspector: Kim Graham (517) 483-5803		BUYER/CA (517) 241-4225
Catering Services – Department of Military and Veterans Affairs - MYCA		Kevin Dunn
CONTRACT PERIOD: From: February 12, 2008		To: December 31, 2011
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** by \$504,000.00 and **EXTENDED** to 12/31/2011.

Please note: The buyer has been changed to Kevin Dunn.

All other terms, conditions, specifications and pricing remain the same.

AUTHORITY/REASON:

Per agency and vendor agreement, Ad Board approval on 3/1/2011 and DTMB/Purchasing Operations' approval.

INCREASE: \$504,000.00

REVISED AUTHORIZED SPEND LIMIT: \$1,835,062.50

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

October 19, 2009

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200102
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Gwen, Inc. d.b.a. Battle Creek Hunt Club Catering 544 West Columbia, Suite B Battle Creek, MI 49015 Drake544@gmail.com	TELEPHONE (269) 274-2656 Tony Drake
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1080 Melissa Castro, CPPB
Contract Compliance Inspector: Kim Graham (517) 483-5803 Catering Services – Department of Military and Veterans Affairs - MYCA	
CONTRACT PERIOD: From: February 12, 2008 To: December 31, 2010	
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, the Contractor will submit bi-monthly invoices. The State may deduct 1% of the total invoice for payments submitted within 10 days of receipt of invoice.

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

AUTHORITY/REASON:

Per vendor agreement (email dated 10/8/09) and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$1,331,062.50

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

March 27, 2009

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200102
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (269) 274-2656
Gwen, Inc. d.b.a. Battle Creek Hunt Club Catering 544 West Columbia, Suite B Battle Creek, MI 49015 Drake544@gmail.com		Tony Drake
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-1080 Melissa Castro, CPPB
Contract Compliance Inspector: Kim Graham (517) 483-5803 Catering Services – Department of Military and Veterans Affairs - MYCA		
CONTRACT PERIOD: From: February 12, 2008		To: December 31, 2010
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 April 1, 2009, the price for regular and modified meals per cadet is as follows:

BREAKFAST: \$3.75
LUNCH: \$3.91
DINNER: \$4.11

NOTE: The DMB Buyer for this Contract is changed to Melissa Castro, CPPB, Buyer Manager (517) 373-1080. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$1,331,062.50

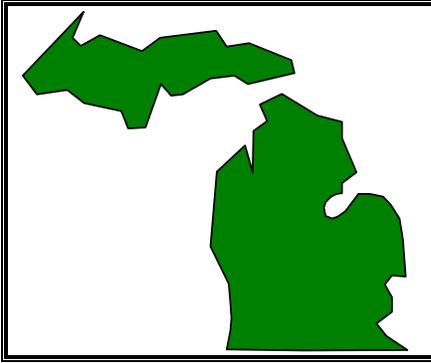
STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
 OR
530 W. ALLEGAN, LANSING, MI 48933

February 21, 2008

NOTICE
TO
CONTRACT NO. 071B8200102
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Gwen, Inc. d.b.a. Battle Creek Hunt Club Catering 544 West Columbia, Suite B Battle Creek, MI 49015 <p style="text-align: right;">Drake544@gmail.com</p>	TELEPHONE (269) 274-2656 Tony Drake
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson, Buyer
Contract Compliance Inspector: Kim Graham (517) 483-5803 Catering Services – Department of Military and Veterans Affairs - MYCA	
CONTRACT PERIOD: From: February 12, 2008 To: December 31, 2010	
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>	

Estimated Contract Value: \$1,331,062.50



**STATE OF MICHIGAN
Department of Management and Budget
Catering Services for
Michigan Youth Challenge Academy (MYCA)**

Contract No. #071B8200102

Buyer Name: Jim Wilson, Buyer
Telephone Number: (517) 241-1916
E-Mail Address: wilsonj4@michigan.gov



Catering Services

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Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 Project Title and Description

This Contract is for Food Catering Service for Department of Military & Veterans Affairs, Michigan Youth Challenge Academy (MYCA), located in Battle Creek, Michigan. The Contractor shall be responsible for procurement of food and supplies for food production/preparation and sanitation, cleaning and sanitation of the dining room, equipment utilized in the serving of food and delivery vehicles, the delivery and set-up of meals, hiring and supervision employees to provide all requirements of this food service Contract.

The MYCA is an alternative high school providing a second chance educational opportunity for at risk youth. The MYCA is located on the campus of the Battle Creek VA Hospital. The Contractor will be required to deliver fully catered meals three (3) times per day, breakfast, lunch and dinner as specified in this Contract. The Contractor shall deliver all meals at specified times as stated despite inclement weather and/or any other conditions.

This Contract is a Unit Price Contract.

The Contractor shall operate the food catering services in conformance with the terms and conditions in the Contract, as well as federal, state, and local accrediting agency regulations including but not limited to:

- Part 129 of Public Act 368 of 1978, the Michigan Public Health Code, as amended, being MCL 333.12901 *et seq.*
- Food Service Sanitation Administrative Rules, Michigan Department of Agriculture, Rules 325.2501 through 325.26008 or any new rules which are promulgated during this Contract.
- Michigan's Public Health Code Adoption of the 1976 Recommendation of the FDA Food Service Sanitation Manual or more current FDA food service sanitation recommendations adopted by the State of Michigan during this contract.
- Rules and Regulations of the USDA and of the Michigan Department of Education governing Child Nutrition Programs.
- Food Code, U.S. Public Health Service, U.S. Department of Health and Human Services, Food and Drug Administration, Washington, D.C., current edition.
- Dietary Guidelines for Americans, 2005 or current edition.
- U.S. Department of Agriculture Food and Nutrition Service.
- MI ARNG 2006 Menu or current edition.

1.002 Project Control

A. EXAMINATION OF RECORDS

The Contractor agrees to maintain all pertinent financial and accounting records and evidence pertaining to the cost of this contract in such detail as to reflect all direct net costs of food, labor, materials, equipment, supplies, and services and other expenses for which reimbursement will be claimed. Any records directly pertaining to transactions relating to this Contract shall be made available upon request to the State of Michigan, its designees, or the Michigan Department of Auditor General at any time during the Contract period and for three (3) years from expiration date and final payment on the Contract. These records shall be made available until three (3) years after final payment under this Contract or by (1) or (2) as follows:

1. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available until expiration of three (3) years from the date of any resulting final settlement.
2. Records relating to litigation of the settlement of claims arising out of the performance of this contract or expenses of this contract to which exception has been taken by the State officials or any authorized representative shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

**B. RIGHTS OF ENTRY RESERVED**

The State by its employees, representatives, and contractors shall have the right at all reasonable times to enter all portions of the premises for the purpose of inspecting same, for observing the performance of the Contractor of its obligations, to service, and/or post notice provided by any law or rules or regulations of the State which the State deems for the protection of the State or the premises, and for doing any act which the State may be obligated to do under the Contract or otherwise.

C. ACCESS TO PREMISES

When it is necessary for the State to bid or rebid food service, the Contractor agrees to give reasonable access and inspection of food service facilities. The successful bidder shall be allowed access to the premises at reasonable times within two (2) weeks prior to termination of Contract. Said successful bidder shall not disrupt the operation while exercising the privilege granted hereunder.

D. COMPLIANCE WITH REGULATIONS

The Contractor shall comply with all applicable ordinances, laws, rules, and regulations of the Michigan Youth Challenge Academy, the State of Michigan, the United States of America, and any agency, authority, or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operation of the food services. The Contractor shall also obtain and keep current licenses required for the conduct of its operations.

E. COMPLIANCE WITH CONTRACT

The State will monitor for compliance with the Contract. In the event the Contractor fails to carry out any conditions/agreements to be performed under the specifications, the State will notify the Contractor in writing of such failure. If the necessary corrective action is not completed within a 10 day period, the Contractor must submit in writing why the corrective action has not been completed. The State reserves the right to determine whether or not such noncompliance may be construed as a failure of performance. In the event that attorney's fees or other expenses are incurred by the State to protect or enforce its rights under this Contract, the Contractor agrees to pay said expenses.

This compliance monitoring will be done in the following manner:

Meal Quality

Facility staff will survey a minimum of three percent (3%) of the meals bi-weekly for tray accuracy, food temperature, portion size, appearance and palatability of items served, delivery time and compliance with the menu. Findings of tray checking will be documented. An evaluation of same will be forwarded to the Food Service Manager of the Contractor once each month.

Sanitation

The MYCA designee will survey the assigned food service/dining areas monthly and forward the report to the Food Service Manager of the Contractor for immediate corrective action as necessary.

The MYCA designee will survey the food service/dining areas and monitor contractor employee health per home procedure. The report will be forwarded as requested to the Infection Control Coordinator with the proper health department.

Quarterly Review

The MYCA designee will review all aspects of food service as indicated on attached Sanitation Quality Assurance Audit Tool.

The Contractor and the MYCA designee shall meet no less than once quarterly to review at a minimum the following:

1. Results of tray monitoring.
2. Compliance with all standards outlined regarding contract specifications.
3. Menu or food item concerns.
4. Previous period's operating reports (to include Contractor's actual overhead costs associated).
5. Inspection reports submitted by the State or other regulatory agencies.



6. Physical inspection of the contractor's kitchen, MYCA dining facility or any other space utilized by the Contractor.
7. Budgetary matters.
8. Other concerns that directly or indirectly pertain to this Contract for food services

The Contractor shall submit brief written quarterly summaries of progress that outline the work accomplished during the reporting period, work to be accomplished during the subsequent reporting period; problems, real and anticipated that should be brought to the attention of the MYCA designee and DMVA Buyer Manager, and notification of any significant deviation from previously agreed upon work plans.

F. ANNUAL SERVICE REVIEW

Twelve months from the first day of the contract period an audit of the services provided under the terms of this Contract will be made. The audit will be a joint activity of the MYCA designee and the DMVA, Buyer Manager.

The audit will consist of an evaluation of the total service quality, dependability, response to problems, and other specifics as required under the specifications, terms and conditions of the Contractual agreement. The results of the audit along with recommendations will be provided to the DMB, Purchasing Operations and distributed to the Contractor for their records.

An unsatisfactory audit will be deemed a material breach of the Contract and result in cancellation of the Contract under terms of the Cancellation Clause in this Contract. Further, should this Contract be canceled for cause, the Contractor will not be allowed to participate in request(s) for continuation of this service.

Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 calendar days of the date the Contractor received, or could have reasonably been expected to receive his/her copy of the audit. This meeting will provide an opportunity for the Contractor to present his/her reactions to audit recommendations.

1.003 Reserved

1.1 Product Quality

1.101 SPECIFICATIONS

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

The Contractor shall be responsible to prepare and provide all meals on a meal rotation basis offering a variety of breakfasts, lunches, and dinners (hot & cold) for a specified number of cadets on a daily basis to include weekends and select holidays. The Contractor shall be required to provide meals for both regular and therapeutic diets as requested by the MYCA designee.

The MYCA has two (2) each – 22 week cycles a year, starting in the middle of January with a two (2) to three (3) week break between cycles and the second cycle beginning in July. The Contractor will not be required to supply food during breaks. Beginning and ending dates for each cycle will be provided to the Contractor on an annual basis.

Number of meals provided may fluctuate due to holidays, family passes, or scheduled outings. MYCA designee will provide Contractor with at least 24-hours advanced notice of estimated number of meals to be served on any particular day.

First two (2) weeks of the cycle (pre-challenge), Contractor will serve all meals (breakfast, lunch and dinner) to the cadets at the Fort Custer Training Center, 26th Street, Augusta, Michigan. The Contractor may be required to supply meals at Fort Custer Training Center approximately two (2) times during each cycle other than pre-challenge times and will be notified in advance. Meals to be served at Fort Custer shall be prepared in advance and delivered in the same fashion as delivered to the MYCA Service Building.



Upon request of the MYCA designee, the Contractor will be required to provide nutritious bagged lunches for cadets and cadre. Contractor will be given at least 24-hours notice of the number of bagged lunches which shall be prepared. If necessary, the MYCA has available food containers for storage of hot/cold temperature control if needed. However, it will be the responsibility of the Contractor to package the boxed lunches in order to maintain freshness, food safety and sanitation requirements.

The cadre (non-supervisory) will be allowed to purchase meals from the Contractor at actual costs (Approximately 10 to 12 meals per day, however these numbers fluctuate and may be higher or lower).

MYCA will pay only for the number of meals received and verified from Form 3032, signature headcount sheet. There will be one (1) head count sheet for cadets, one (1) for cadre supervisory – non-paying and paying cadre per meal. Copies of signature headcount sheets will be given to the Contractor for review.

The Contractor will be responsible for: labor, supplies, delivery, set up, storage, and serving of all prepared food items in compliance with the Public Health Code (most recent edition) regarding food safety and acceptable temperature ranges, and follow all HACCP Guidelines to keep food serving areas in a clean orderly, and sanitary condition at all times. Contractor will be responsible for delivery of food at the appropriate times, set up in the designated dining area, and supervision of the cadets who will assist the Contractor in serving of the meals to assure proper portions are provided. The Contractor will be required to remain on-site during set-up, serving, preparation, and cleanup. Contractor will be required to remove any left over food from meals, all dirty utensils, food disposable five section trays, containers, and any other items necessary which were utilized in serving of meals from premises for disposal or cleaning. Cadets will be made available to the Contractor to remove and dispose of trash at MYCA site. However the Contractor shall be responsible for the sanitary handling of the garbage and trash according to the Public Health Code. The Contractor shall use the receptacles provided at the MYCA site

All menus must be approved in advance by the State, Michigan Department of Military and Veterans Affairs, and the Michigan Youth Challenge Academy.

1.102 OBJECTIVE OF MICHIGAN YOUTH CHALLENGE ACADEMY (MYCA) FOOD CATERING SERVICES

- A. To provide quality food service, i.e., daily meals and nourishment's that:
- Are attractively prepared by methods known to retain nutrient value.
 - Are attractively served having texture, color, and flavor compliments.
 - Are served in a timely manner.
 - Meet the dietary requirements as specified in this contractual agreement.
 - Are prepared in a manner that preserves nutrient value, and palatability, and are served in an appealing manner.
- B. To provide accurate timely records of foods served between meals, at meals and as special requests.
- C. To provide and/or participate in training for cadets/cadre and food service employees relative to food service operations.
- D. To meet or exceed the requirements of the Department of Community Health Bureau of Health Systems, any all State of Michigan and U.S. Federal Government food sanitation and preparation guidelines as necessary.
- E. To promote a spirit of teamwork among all employees involved with the food and nutrition needs of the cadets/cadre.

**1.103 DEFINED TERMS**

The following terms used in this Contract have meanings as set forth below:

Contract Compliance Inspector - Designee to administer the Contract on a day to day basis.

Direct Labor Costs - means wages and benefits paid by the Contractor to all employees who are responsible for management and supervision of food service and wages and benefits paid by the Contractor to all employees involved in all food preparation activities.

DMB - The Department of Management and Budget.

DMVA – The Department of Military & Veterans Affairs.

MYCA – Michigan Youth Challenge Academy.

CADETS – Youths enrolled at Michigan Youth Challenge Academy.

CADRE – State of Michigan personnel employed at Michigan Youth Challenge Academy.

Fiscal Year – October 1 through September 30 of any year.

Food Service Manager - The person selected by the Contractor to manage the daily delivery of food catering services.

HACCP - Hazard Analysis Critical Control Point.

House Menu - The main menu served from which all other menus/diets are modifications of this menu. Term interchangeable with the term Regular Menu.

MSDS - Material Safety Data Sheets.

Modified Diets - All therapeutic menus, vegetarian menus, and any other menu modified menu required to meet individual requirements.

Nutrient Standards – The required level of calories, calories from fat and key nutrients for a specific grade or age group for breakfast, lunch and dinner. Nutrient levels were established according to the 1989 Recommended Dietary Allowances (RDA), and calories from fat and saturated fat are based on the 2005 Dietary Guidelines for Americans.

Dietary Guidelines for Americans, 2005 Edition (DGA) – Nutritional advice for healthy Americans ages 2 years and older. Jointly issued by USDA and DHHS and updated every five years, these guidelines are the cornerstone of Federal nutrition policy and nutrition education activities.

MI ARNG 2006 Menu – The Michigan Army National Guard soldier meal requirements, recipes, volumes and sample menu information pages, menu and grocery lists as provided.

Nutrition Facts Label – The Food and Drug Administration (FDA) requirements nutrition labeling for most foods (except meat and poultry, which have a Nutrition Facts label administered by the Food Safety and Inspection Service of USDA). Nutrition Facts labels offer useful and accurate nutrition information. Manufacturers are required to provide information on specific nutrients on the labels. Food packaged in bulk or institutional packaging is exempt from the nutritional labeling requirement but manufacturers may voluntarily include such labeling.

Public Health Code – Includes all of the following: Part 129, of Public Act 368 of 1978; Food Service Sanitation Rules, Michigan Department of Agriculture, and Michigan's Public Health Code Adoption of the 1976 Recommendations of the FDA Food Service Sanitation Manual and any revisions, amendments and updates made during the duration of this contract.



Quoted Contract Prices - The prices quoted by the Contractor in the Contract for the Total Daily Meal Cost.

R.D.A. - Recommended Dietary Allowances of the National Research Council.

Service Building – Location where dining facility is located and food catering services are delivered, set-up and served to cadets and cadre.

Total Daily Meal Cost - The sum of the costs for breakfast, lunch, and dinner per person offered by the Contractor. Total Meal Cost includes regular and modified diets.

Total Daily Meal Cost, Regular - The sum of the costs for breakfast, lunch, and dinner per cadet/cadre offered by the Contractor for regular diets, if the Contractor provides separate pricing for regular diets and for modified diets.

Total Daily Meal Costs, Modified - The sum of the costs for breakfast, lunch, and dinner per cadet/cadre offered by the Contractor for modified diets, if the Contractor provides separate pricing for regular diets and for modified diets.

1.104 FOOD PRODUCTION SPECIFICATIONS

The Contractor must incorporate food services into their operating plan. The food service shall be designed to attain the objectives specified.

The Contractor will prepare from scratch utilizing a standardized recipe prepared hot and/or cold meals utilizing a catered meal method for approximately 100-125 cadets, ages ranging from 15-18 years of age, male and female, and cadre (supervisors) at the Michigan Youth Challenge Academy (MYCA). Meals will be required seven (7) days per week during each 22 week cycle. Because the MYCA offers a voluntary program to the cadets, the number of cadets may decrease as each cycle progresses. The MYCA designee will keep the Contractor informed as to these numbers, with as much advanced notification as possible.

All meals are to be served daily according to the following schedule:

Monday-Friday	Breakfast: 7:20 a.m. - 8.:00 a.m.
	Lunch: 12:00 p.m. - 12:45 p.m.
	Dinner: 4:30 p.m. - 5:20 p.m.
Saturday & Sunday	Breakfast: 7:20 a.m.
	Lunch: 1:20 p.m.
	Dinner: 5:30 p.m.

Portion control shall be monitored at all times and is the responsibility of the Contractor.

In the service of meals, proper temperatures in compliance with the Michigan Food Code and Public Health Code shall be maintained at all times. Food temperatures shall be recorded by the Contractor at each meal and records maintained at all times. All records will be available for review by the State, DMVA, MYCA or designee upon request. MYCA staff will also be allowed to randomly verify meal temperatures through periodic checks as necessary.

The Contractor is responsible for the purchase of all provisions and ingredients in the preparation of all meals utilizing standardized recipes, proper hot/cold storage for all food, and the proper serving of all meals.

The Contractor is responsible for the purchase of all cleaning products utilized and the routine cleaning, sanitation, and maintenance of the delivery/transportation vehicles.

A 28-day cycle menu is currently utilized at the MYCA with the exception of the two (2) week pre-challenge at Fort Custer (unless coordinated with MYCA personnel).



Menus must be posted outside of the dining/mess hall. The Contractor shall be responsible for following the menu provided to the satisfaction of MYCA. The Contractor shall adhere to all specifications in this Contract and detailed nutritional requirements shall be adhered to at all times for all meals served under this Contract.

Current "Dietary Guidelines for Americans, 2005 or current version" and the "Daily Food Guide" adopted from the Food Guide Pyramid – United States Department of Agriculture and the Michigan Army National Guard 2006 Menu or current version will be the standards used for menu planning. Portion sizes must be in accordance with the planned cycle menus. Upon request of the MYCA designee the Contractor may be required to provide additional nutrition requirements in order to meet individual resident needs as necessary at no addition charge to the MYCA.

The Contractor is expected to provide seasonal variations to the menu rotation.

MYCA recognizes that occasionally menu substitutions are necessary. If such circumstances occur:

- (1) The Contract Compliance Inspector or designee shall be notified prior to implementation.
- (2) Only items of comparable nutrient content from the same food group may be substituted, i.e., grapefruit for oranges, roast beef for hamburger.
- (3) Items appearing on the previous day's menu or the following day's menu may not be used.
- (4) A record of substitutions must be made available monthly, utilizing Record of Substitutions.
- (5) A recurring substitution rate of greater than 10% of meals served each cycle is considered indicative of poor management, this shall be considered a material breach of the Contract and the State shall have available all remedies under this Contract including liquidated damages.

Menu for Modified Diets

Modified Diet Menus may be requested throughout the duration of the Contract and menus provided by MYCA upon request.

Standardized Recipes

Standardized recipes are expected for all food items prepared for meals including modified diets, HACCP Guidelines must be included.

Temperatures.

Hot entrée, vegetable, hot cereal, and hot foods shall be maintained between 150-185 degrees F. in bulk. Hot beverages shall be maintained between 140-160 degrees F. Cold items such as puddings, salads, dairy products, meats or egg sandwiches shall not be less than 33 degrees F. or greater than 45 degrees F. On demand, the Contractor shall furnish a time/temperature study for one (1) meal of every menu cycle. There shall be a minimum of three (3) meals chosen to represent each of the three (3) meals served, as well as various days of the week.

Appearance and Taste

Appearance and taste of menu items shall meet the approval of the MYCA, designee.

Variances

MYCA has the right to cancel meal(s) with a 24 hour notice to Contractor due to a field trip or other outings scheduled for the cadets.



- A. **Nutrition Requirements.** All regular diet menus and menus of mechanical modification shall meet the requirements of the required menu and portion sizes, as well as meet or exceed the current Recommended Dietary Allowances set forth by the Dietary Guidelines for Americans, 2005 or current version. All menus (regular, mechanically modified, or otherwise modified) shall meet the requirements of the MYCA designee. Contractors will be allowed to utilize the Michigan Army National Guard 2006 Menu or current version as a guideline for menus and requirements of the MYCA.
- B. **Menu.** The Contractor shall provide a 28 day rotational menu or a (4) week cycle menu. In addition, menus must meet the following specifications:
1. A variety of foods must be included in the menu. In a three (3) week period, no entrée prepared with the same recipe shall repeat. Recipes within the meat, vegetable, fruit and dessert groups must be different for the same days of each week.
 2. The majority of the carbohydrate shall be complex carbohydrate from the bread/cereal or starchy vegetable food groups. Desserts shall be pudding, custard, ice cream, cookie, or a baked dessert at least one time per day with the remainder being fruit.
 3. Soup and sandwich meals may be served two (2) times per week. Entirely cold meals may be served one (1) time per week from May 1st to September 30th.

Once implemented, menus must be complied with unless food items are seasonally unavailable or available in insufficient quantities. Should menu substitution be necessary, approval must be given by the MYCA designee prior to implementation. Only items of comparable nutrient content from the same food group may be substituted, i.e., grapefruit for oranges, melon for strawberries, pudding for ice cream, roast beef for hamburger. Items appearing on the previous day's menu or the following day's menu may not be used for substitution. Substitutions shall not exceed 10% in frequency of all items on the menu over one (1) cycle. A record of substitutions as required by Department of Community Health Bureau of Health Systems must be available to the MYCA designee. A substitution rate of greater than 10% will be considered a Breach of Contract and subject to requirements stated in this Contract. With mutual consent, the Contractor and MYCA may change menu items to improve acceptance of cadets and cadre. Contractor acknowledges the right of MYCA to change menu items with the input of Contractor.

- C. **Menus for Modified Diets.** The basic house menu shall provide 3,600-4,000 calories daily and be extendible to mechanically and therapeutically modified diets for the MYCA. Contractors will be allowed to utilize the Michigan Army National Guard 2006 Menu or current version as a sample reference for standardized recipes and menus or a combination of the Dietary Guidelines for Americans, 2005 or current edition.

Mechanically modified menus must have nutrient contents that meet or exceed those of the regular menu.

- D. **Food Production.** Foods items shall meet or exceed the specification identified herein or meet the approval of the MYCA designee. Standard recipes shall be used. Once recipes have been adjusted to meet the requirements of the MYCA cadets/cadre, a copy of each recipe with its nutrient analysis, shall be supplied by the contractor with an analysis of any ready-prepared foods utilized shall also to be provided. The Contractor by mutual agreement with the MYCA designee may wish to test new products, recipes or menu items. This shall be allowable. However, both parties shall evaluate the item for taste, appearance, and acceptability. Plate waste information on any menu item when requested by the MYCA designee is to be provided.
- E. **Isolation Trays.** Disposables shall be used for isolation trays. Contractor shall supply the disposable trays.
- F. **Double Portions.** A double portion shall be defined as follows:

A double portion (entrée) shall consist of a second serving of the entrée plus other menu items. An example would be a second serving of pork chop and mashed potatoes.



- A double portion (non-entrée) shall consist of a second serving of other menu items excluding the entrée. An example would be a second serving of pie and milk. There will be no additional charge for double portions of non-entrée items, such as vegetables and starch items.
- G. **Menu substitutions.** It is recognized that occasionally menu substitutions are necessary. If such circumstances occur:
1. The MYCA designee shall be notified prior to implementation.
 2. Only items of comparable nutrient content from the same food group may be substituted, i.e., grapefruit for oranges, roast beef for ground beef.
 3. Items appearing on the previous day's menu or the following day's menu may not be used.
 4. A record of substitutions must be made available monthly, utilizing Record of Substitutions form (see sample attachment form).
 5. A recurring substitution rate of greater than 10% meals each cycle is considered indicative of poor management. This shall be considered a breach of contract and is subject to liquidated damages.
 6. With mutual consent, the Contractor and the MYCA designee may change menu items to improve member acceptance.
- H. **Standardized Recipes.** Standardized recipes are expected for all food items prepared for member meals including modified diets. HACCP Guidelines must be included in the recipe. Contractors are allowed to utilize the Michigan Army National Guard 2006 Menu or current version for sample standardized recipes.
- I. **Special Meals/Diets Information.** Special meal orders shall be placed with the contractor via the telephone, email, or written memorandum. At times specified by the MYCA designee, routine special diets/meals shall be processed prior to each meal. Orders requiring immediate processing shall be immediately process as needed, however whenever possible, the MYCA designee will provide advanced notification to the Contractor at least 24 hours prior to the special meals/dietary requirements are necessary.

Bidder Response to Task:

Bidders shall provide detailed response to this Task with their proposal.

1.105 Food Purchase Specifications

The food specifications set forth below are the minimum acceptable qualities. The Contractor shall provide the MYCA with a complete list of the grades and qualities of food to be used at the MYCA. The food specifications set forth below are the minimum acceptable qualities.

Cereals – Hot or cold. Shall not be presweetened nor contain psyllium. Significant source of folacin, iron, magnesium, zinc and fiber preferred.

***Canned Fruits** – Fancy and choice grades. Carbohydrate controlled juice pack or water packed only. Portion sizes shall be 4 oz., 1/2 cup except when modified diets require otherwise.

Dairy Products – All milk shall be Grade A and vitamin A & D fortified. Individual servings of skim milk and 2% milk must be made available for selection at the breakfast and dinner meals. All yogurt(s) shall contain active cultures, offering a variety of fruit flavors, low fat or fat free. Margarine or butter shall be offered at all meals. Margarine or butter shall be served on the side only as an individual serving size.

Eggs – USDA Grade AA. Medium for poached or fried eggs. Frozen pasteurized whole eggs may be used for scrambled eggs.



***Frozen Entrees** – Must contain a minimum of 14 gm protein if used at the evening meal. 21 gm protein if used at the noon meal. TVP is not acceptable as a part of any meat product. Entrees made with ground beef may contain a mixture of ground turkey and ground beef. The meat mixture will contain 50% or less of ground beef (20% or less fat).

Fresh Produce and Fruit - # 1 quality. A variety of fresh fruit in season must be provided. Individual fruit servings may include oranges, apples, bananas, strawberries, watermelon, cantaloupe, honeydew, grapes, pineapple, etc.

Fruit Juice – Shall be 100% fruit juice. Punch, lemonade, juice cocktails are unacceptable as menu or nourishment items, except where specified.

Canned Vegetables – Choice and extra standard grades.

Meats – USDA Choice. Poultry – Grade A Ground Beef – USDA utility or better with fat content between 18% and 20%.

Luncheon Meats - All luncheon and variety meats shall be made from poultry or beef with a non-pork casing. Luncheon meat products containing pork as an ingredient shall not be used. Lettuce, tomato and onion slices shall be packaged separately and served on the side.

Tuna - Canned tuna, water packed shall be provided in an individual portion can with self-opening lid. Each cadet shall assemble their own sandwich at meal time. When this item is served on the menu, a container to mix ingredients for tuna salad must be provided. Tuna for cadets receiving food from a serving line may be served from premixed bulk containers of tuna salad.

***NOTE:** Fresh or frozen fruits and vegetables are preferred.

****SPECIAL NOTE:** No soy fillers or extenders shall be added to meat or fish products.

1.106 QUALITY ASSURANCE PROGRAM

The Contractor commits to the following relative to the Quality Assurance Process at the MYCA:

- A. Implement Contractor survey and evaluation tools to ensure consistency and compliance in quality management.
- B. Acquaint all staff with the standards and tools by which quality is measured.
- C. Contractor shall have a reporting mechanism in place for quality assurance evaluations and surveys.
 - QA Plate Waste
 - QA Meal Standards: Assessment Program
 - QA Recipes
 - Trayline Temperature Record
 - Food Temperature Record (daily from cooking facility to serving line for each meal period)
 - Equipment Temperature Log
 - Sanitation Checklist
 - Cadre/Cadet Satisfaction Surveys

1.107 COMPENSATORY/LIQUIDATED DAMAGES

Failure to maintain adequate cleanliness and sanitation will result in compensatory damages to the State. The Contractor shall compensate the State for the cost of obtaining and using another means of cleaning/sanitizing the assigned areas. The State, at its option for amounts due the State as compensatory damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.



The production and service of meals under the requirements of this Contract have been developed to be consistent with the needs of MYCA as well as to meet the standards of the federal and state governments. Failure to comply with the requirements of this Contract will result in substandard service which will interfere with the health and safety of DMVA residents to the loss and damage of the State.

Due to the nature of the case, it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such substandard service. The State and the Contractor, therefore, agree that in the event of such substandard service, the Contractor shall pay the amount as liquidated damages.

The State, at its option for amounts due the State as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

Liquidated damages will apply to the following as well as to any new enhancements and/or augmentations which become a part of the Contract. The imposition of liquidated damages is at the State's sole option and failure to impose liquidated damages for any specific incident as provided in the following does not waive the right of the State to impose liquidated damages in the future.

1. Timeliness of Meals. Failure to provide meals at specified times will result in liquidated damages of one-half of the meal charge for each meal which is untimely.
2. Proper Temperatures. Failure to maintain proper food temperatures shall result in liquidated damages of one-half of the meal charge for each meal for which proper food temperatures are not maintained.
3. Inaccurate Meals. If more than 10% of the meals monitored by MYCA staff during one (1) month are inaccurate, liquidated damages of \$1.00 per inaccurate meal will be assessed. An inaccurate meal is a meal which does not comply with a resident's diet requirements or the meal does not comply with the regular menu if the resident has no specific diet requirements.

Menu Item Substitutions. If menu items are substituted in more than 10% of the meals served in a menu cycle of 28 days, liquidated damages of 10% of cost of each meal in which substituted items are served will be assessed.

1.108 WARRANTY FOR PRODUCTS OR SERVICES

The Contractor shall guarantee all aspects of their program. Any issues will be addressed within 24 hours after receipt of notice. In addition, the Contractor agrees to follow all HACCP guidelines.

1.009 PERSONNEL REQUIREMENTS

The following are requirements pertaining to personnel specifications and policies that are applicable to this Contract.

- A. The manager must be a Certified Dietary Manager in accordance with State Consumer & Industry Services requirements. The Food Service Manager shall have an Associate Degree in Food Service Management or management related program and/or a minimum of three years experience in food service management at a food service organization/business, or any combination thereof. A minimum of three (3) years experience shall be as Food Service provider showing the ability to serve large groups in a catering style setting. The Contractor shall provide documents upon request verifying these qualifications. The Contractor should also note that the Contract requires the manager to remain the length of the Contract. The MYCA reserves the right to, with 30 days notice, request replacement of the Food Service Manager for operating difficulties determined to be the result of inferior, on-site management.

**B. Supervisory Personnel**

1. All supervisory personnel shall have at least six (6) months previous experience in food service supervision and possess one (1) of the following from accredited college or university: Baccalaureate degrees in Dietetics, Food and Nutrition, Hotel/Restaurant Management, or Culinary Arts degree; or an equivalent of three (3) years experience within the food service industry. The Contractor shall provide this information upon request verifying these qualifications. Competency evaluations related to health care food service will be required for these persons.
2. The Food Service Manager and all supervisory personnel shall have Certified Food Protection Professional certification from an accredited organization and provide this information upon request.
3. The Contractor shall provide the MYCA designee with documents verifying these qualifications prior to hiring any personnel.
4. Direct first-line supervision shall be present during all operating hours of the dining room to observe the food service line during each meal period.
5. The Contractor shall provide management staff salary scale upon request.

C. Operating Staff

1. The Contractor shall provide sufficient personnel to assure prompt, accurate, quality service.
2. The Contractor shall adhere to Criminal Background Checks and only appoint employees or prospective employees to work at the MYCA who have cleared the Law Enforcement Information Network (LEIN) check. LEIN checks shall be processed at no cost to the Contractor. The following information will be required for each employee or prospective employee:

Employees Full Name
Social Security Number
Date of Birth
Michigan's Driver's License Number or State ID Number
Employee's Signature allowing the background check
3. The Contractor shall provide trained competent personnel for the preparation, assembly and serve the food for all meal times.
4. The Contractor must provide adequate, trained relief personnel to substitute for absent regular employees. A labor report is required the first week of the new quarter on a quarterly basis. This shall indicate the number of FTEs based on actual hours worked compared to the number of meals served. The method of determining total hours and FTEs is to be specified along with regular and overtime hours worked.
5. The Contractor shall verify that all food service personnel have passed a physical examination prior to assuming duties. This physical examination shall be at the Contractor's expense. The examining physicians shall be made aware of the restrictions placed on food service workers by the most recent edition of the Food Code as well as conditions set forth by the MYCA designee. At a minimum, the physician shall certify the food service employee is free from tuberculosis, via PPD testing, hepatitis A, via blood testing, pathogenic bacteria and parasites including Salmonella Typhi, Shigella spp, Escherichia coli O157:H7 via stool sample testing. The Contractor must maintain and make available to the State all records of food service personnel assigned to this Contract. Tuberculosis testing shall be completed on an annual basis and as indicated in the manual. The examining physician shall follow the guidelines outlined in the Department of Community Health Bureau of Health Services Manual to determine the acceptability of the applicant.



All food service employees shall be required to report to the Contractor's Person In Charge whenever they experience any symptoms that may be related to, whenever they are diagnosed with, or when they have had an exposure to any of the above high risk illnesses. The MYCA reserves the right to request any of the above testing for any and all employees when there is a question of food safety or an outbreak of food borne illness.

6. The Contractor shall be responsible for assuring that lost keys or identification badges and keys from terminated employees are returned to the MYCA designee. If not returned, the Contractor shall be charged the replacement cost for lost key and/or locking device replacement.
7. The Contractor shall require employees to comply with instructions pertaining to MYCA conduct and building regulations that are in effect for the control of cadets accordingly.
8. The Contractor shall require employees to maintain member confidentiality in accordance with Federal HIPAA rules and regulations.
9. The Contractor shall require that all applicants for employment who will be assigned to work at shall pass a drug test prior to being offered employment. Drugs tested shall include all controlled substances or controlled substance analogue listed in schedule 1 or schedule 2 of part 72 of the Michigan Public Health Code, Act. No. 368 of the Public Acts of 1978, as amended, being sections 333.72001 et seq. of the Michigan Compiled Laws. The Contractor shall submit proof that each employee has passed the drug test upon request.
10. The Contractor shall attempt to implement staff policies that, to the maximum extent possible, reduce the differences in policies as established MYCA cadre/cadets. The contractor shall notify employees that any violation of MYCA Rules, Policies or Procedures could result in default of the contract.
11. The home has a policy of zero tolerance for violent behavior. Anyone engaging in threatening or abusive conduct (either implied or actual) is subject to removal from the building pending appropriate corrective action.
12. The MYCA reserves the right to request replacement of Contractor personnel for violations of agency conduct requirements, rights violations, or other poor performance that interferes with the mission of the MYCA.

Within 10 days after receiving written notice from the MYCA designee, the Contractor shall replace any manager or foodservice worker assigned, for operating difficulties deemed solely by the State to be the result of inferior work performance or on-site management.

The Contractor shall replace any food service worker immediately, at the state's request, if the food service worker is found with contraband in his/her possession.

D. Training

Training requirements are as follows:

1. New Employee Training: The Contractor shall train all new employees in the following areas before the employee is deployed at MYCA: safe food handling, personal hygiene, foodservice sanitation, tray assembly, menu reading, modified diets, and nourishment procedures. In addition, all newly hired employees shall receive an orientation provided by the Contractor the MYCA policies and procedures.



2. Monthly Training: The Contractor shall conduct at a minimum, one (1) training session for half an hour monthly in coordination with the MYCA designee for all food service employees on topics that include, but are not limited to: nutrition, sanitation, food handling, emergency feeding, and safety. Training topics for the year shall be scheduled by the end of the first month of the fiscal year. All employees shall receive training specific to their job functions. Additionally, cooks and supervisors shall receive training specific to their job functions. Topics shall be responsive to needs identified jointly by the Contractor and the MYCA designee.
3. Employee Training Records: The Contractor shall maintain a training record for each employee that shall document the topics of orientation and ongoing training and the date of each. The MYCA designee shall have access to employee training records.

E. Staff Uniforms

The Contractor must provide uniforms to food service employees. The MYCA designee shall approve uniform style and design. Shoes and other items of clothing shall comply with MYCA policy. Uniforms shall be clean white fabric coat, dress, or pants suit. Sufficient supply of clean aprons shall be maintained. Hair shall be covered completely for both male and female employees. Bearded employees shall have their beards covered. Wedding bands and watches are the only jewelry allowed during food preparation and service. Managers and first-line supervisors shall have the same attire.

The Contractor shall ensure that their employees are provided with food handling gloves and hair nets/hats at Contractor's or employee's expense. Type of gloves and hair nets/hats are to be submitted to the Contract Administrator for approval. Gloves and hair nets/hats shall be worn at all times that staff are on-site acting within the course and scope of their employment.

F. Advertising for Recruitment

When advertising for recruitment, the Contractor's name shall be specified, not the MYCA.

G. Emergency Medical Service

The Contractor is responsible for emergency medical care for employee injury occurring on the MYCA premises.

H. Infection Control Records must be maintained for employees with upper respiratory infections, nausea, vomiting, hepatitis, and other infectious illness.

I. Quality Assurance

The Contractor shall have a comprehensive, on-going Quality Assurance Program that will meet the requirements of the MYCA, the Department of Military Affairs, and Hazardous Analysis Critical Control Point (HACCP) as required. It shall be designed to objectively and systematically monitor the quality and appropriateness of member care, pursue opportunities to improve care and to resolve identified problems. The Contractor shall submit a copy of their quality assurance program and HACCP Program upon request.

The Quality Assurance Program will monitor significant functions related to food service operations and this agreement. It shall include at least monitoring of sanitation, food handling, employee health and hygiene, member meal satisfaction, dining room service, diet accuracy, diet order procedures, clinical services and effectiveness of staff training. The program shall include input at various stages from all levels of employees, i.e., food service workers, food service supervisors, food service managers, etc.

1.110 CONTRACTOR REQUIREMENTS

The following are requirements pertaining to the responsibilities of the Contractor that are applicable to these specifications:



- A. Make all records maintained in support of contract terms available to proper MYCA personnel at any reasonable time. Keep such records for three (3) years from the close of the fiscal year to which they pertain.
- B. Adhere strictly to all applicable pure food laws, rules and regulations controlling food services.
- C. Be solely responsible for employee compensation including all applicable taxes and insurance. Also for any losses incurred by MYCA as a result of any dishonest, fraudulent, or negligent acts on the part of company employees or agents.
- D. Provide emergency mass feeding when requested and directed by costs otherwise required herein. Any costs or charges in such a mass emergency feeding program shall not be considered part of the original costs under this agreement, but shall be figured in a manner identical to normal operation as listed hereunder the pursuant to applicable items in the bid proposal. The Contractor will have the option to decline the offer of emergency mass feeding, however will be required to continue normal catering operations to the MYCA.

The Contractor shall provide all food transport containers, transportation vehicles, serving gloves, vinyl aprons (for cadets to wear while serving meals – to be sanitized prior to each use), and disposable hats or hairnets. The Contractor shall also provide appropriate detergent and janitorial supplies for washing containers, steam table, dining room cleaning/sanitation, and transport vehicles and shall provide Material Safety Data Sheets as necessary. **The Contractor is responsible for all costs of these products which include all cleaning products. The Contractor shall submit a list of these products upon request. Contractor shall provide an MSDS sheet for all cleaning products. Those products which are unacceptable shall be replaced by an alternate type cleaning product accordingly.**

The Contractor shall supply, install and maintain all Foodservice equipment such as ice machine, steam table, and beverage dispenser and shall be in working order at all times. The Contractor shall supply a list of the brand and style of these items.

The Contractor shall ensure that all transport vehicles are odor free and cleaned.

The Contractor shall ensure that all equipment provided by the Contractor is maintained in an acceptable condition. In addition, repair or replacement of any equipment belonging to MYCA shall be the responsibility of the Contractor if the repair was necessitated by negligence on behalf of the Contractor.

The Contractor shall provide all meals at the specified times. The Contractor shall supervise the serving of the meals by the cadets to assure proper portion control.

Disaster meals shall be provided to MYCA cadets/cadre if on or off site.

- E. Make no alterations, changes or improvements to areas granted to the Contractor without prior written permission from the MYCA.
- F. Ensure that no equipment of any type shall be removed from MYCA except to be repaired and the MYCA designee shall be notified as such.
- G. Provide for its own fire, theft, and other required insurance at its own expense to over its property located on the premises of MYCA. The Contractor further agrees to provide all necessary theft and/or other insurance to cover clothes, garments, and other articles owned by its employees. In case of fire, or any unforeseen casualty where services of this type are no longer feasible at this location, this contract may be terminated by the State without payment for any claim for damage.



- H. Supply all paper and disposable goods necessary for the preparation, service and storage of food, i.e., Styrofoam cups, flexi-straws, napkins, flatware (includes: forks, spoons, and knives), five-section paper trays, paper towels, foil, bags, disposable gloves, sandwich bags, aluminum foil, plastic wrap, coffee filters, baking sheets, etc. **Contractor is responsible for all costs of these products. Costs for paper and disposable goods shall be included in the per meal rate price.**
- K. Examine food handlers visually, daily, to ensure they are following established hygienic practices in the handling of food:
- Clean outer clothing.
 - Hair nets completely cover hair.
 - Proper hand washing technique is utilized and hands are washed at appropriate times.
 - Ensure gloves are being worn during food preparation by employees which have open areas (wounds, sores, etc.) on hands
 - Ensure food dispensing gloves are worn by employees who are dispensing food on tray serving line.

CONTRACTOR'S FOOD PREPARATION FACILITY AND DINING HALL AT MYCA

1. Food must be stored properly. All food storage areas will be clean, sanitary, and free of insects and rodents. All items must be stored on pallets or shelving.
 - Refrigerators and cold storage facilities must have an operational and visible thermometer.
 - Foods stored in refrigerators or cold storage facilities will be maintained at the following temperatures:
 - a. Refrigerated storage temperature: 32 to 40 degree's F.
 - b. Frozen storage temperature: 0 to -10 degrees F.
 - c. All refrigerated freezer or dry storage areas shall be temperature monitored/logged daily on a monthly report.
 - d. Dry storage; recommended 50-60 degrees F.
 - Frozen foods, once thawed, will not be refrozen. Certain items that are poor growth media for bacteria such as mustard, ketchup, bread, or cheese are exempted.
2. Proper dishwashing techniques must be utilized.
 - Wash time, water temperature, pressure, and quantity will be prescribed by the Department of Community Health Bureau of Health Services.
 - Final rinse water will be applied at a temperature of at least 180 degrees F.
 - Clean dishes, glasses, disposable five section trays, and other utensils will be stored in such a manner as to prevent contamination from dust, dirt, insects and fingers.
3. Proper housekeeping procedures must be maintained:
 - Floors will be cleaned by washing or mopping: dry sweeping may be performed prior to mopping.
 - Dining room floor will be buffed one day per week after evening meal is served, by cadets.
 - Dining room floor will be stripped and refinished quarterly.
 - Steam tables, coffee urns, water fountains, griddles, condiment tables, etc., will be cleaned and sanitized after each use. Kitchen tables, meat grinders, knives, etc., will be cleaned and sanitized after each use.
 - Cooking surfaces of grills, griddles and similar cooking devices shall be cleaned at least once a day, and shall be free from encrusted grease deposits and other soil.
 - Non-food contact surfaces of all equipment used in the operation of food services, including tables, counters, shelves, mixers, grinders, slicers, hoods and fans, shall be cleaned at such frequency as is necessary to be free from accumulations of dust, dirt, food particles and other debris.



- Garbage will be disposed of in a sanitary manner; cans containing waste food will be topped to prevent access by insects and rodents.
 - Animals are not permitted in food service facilities.
 - Smoking is not permitted in the kitchen, dining room, or the kitchen offices. Smoking is allowed only in specified areas.
 - Extermination will be performed in accordance to MYCA designee with the exterminator and more frequently if deemed necessary by the Food Service Contractor and MYCA designee.
- L. The Contractor agrees to furnish all labor, supplies, materials, equipment, and supervision sufficient to keep the food service areas in a clean, orderly, and sanitary condition at all times. The Contractor shall submit, upon request, a comprehensive list of the manufactures and the brand names of the material that the Contractor proposes to use in the performance of this work. No materials that State determines would be unsuitable shall be used in connection with the work of this contract. All chemicals used in cleaning must have Material Safety Data Sheets in which the Michigan Right to Know Law will apply.
- M. The Contractor will be required to provide the MYCA with a consistent food service plan for alternate service in the event of employee strikes, water loss, heat loss, steam or electricity loss, inclement weather, or other events causing food service disruption.
- P. Participate in the MYCE cadre meal program whereby cadre may purchase meals. (The number of estimated meals for cadre staff/guests will be provided to the contractor).
- Q. At times, the MYCA will request that bagged lunches/beverages be supplied.
- R.
- S. **The Contractor is responsible for cleaning and maintaining all serving and preparation areas with the assistance of the MYCA cadets. (including all dining equipment).**
- T. The Contractor shall comply with the current Michigan Food Code.
- U. The Contractor shall provide MYCA with an “emergency” three (3) day menu and plans to provide service in the event of employee strikes, water loss, heat loss, steam or electricity loss, inclement weather, or other events causing food service disruption. If Contractor cannot supply meals, MYCA will request another vendor to provide food services at total cost to Contractor.
- V. The Contractor shall maintain a food establishment license from the Michigan Department of Agriculture. Foodservice shall be operated in compliance with all rules and regulations of the Michigan Department of Agriculture. **On annual inspections, Contractor must achieve a minimum score of 80%. Provide a copy of latest inspection and latest pest control inspection.**
- W. The Contractor shall provide its own fire, theft, automobile and other required insurance at its own expense to cover its property located on the premises including clothing, vehicles and other articles owned by Contractor’s employees.

1.111 RESPONSIBILITIES OF THE MICHIGAN YOUTH CHALLENGE ACADEMY

The following are requirements pertaining to the responsibilities of JHV.

- A. A LEIN check of each of the Contractor’s employees assigned to the facility at no charge to the Contractor.
- B. A negotiated cadet work force to assist with food service set-up in dining hall at MYCA, serving of meals at meal times, and all cleaning of dining hall to include disposal of rubbish at no cost to Contractor.
- C. A menu which is compatible with cadets on both regular and therapeutic diets.
- D. A dining facility at MYCA (subject to location).



- E. Inspections – Onsite to include: a) the State shall conduct sanitation, fire safety and MIOSHA inspections annually. Inspections may be made more often at the discretion of MYCA; b) security inspections – announced and unannounced and; c) other inspections as required.
- F. Evaluations – Periodically, throughout the life of the Contract, the meals delivered will be evaluated by MYCA nutritionist for aesthetic appeal, nutrient value, bacteriological content, portion size, and temperature. Also, the Contractor will allow periodic visits by MYCA to the food service preparation area of Contractor's own facility.
- G. A locked cabinet/closet will be made available for Contractor to utilize for storage of cleaning supplies.

1.112 CONTRACTOR RESPONSIBILITIES

A. **ADVERTISING FOR RECRUITMENT**

When advertising for recruitment, the Contractor's name shall be specified, not the DMVA.

B. **EMERGENCY MEDICAL SERVICE**

Contractor shall arrange ambulance service and emergency medical care for employee injury occurring on the MYCA premises.

C. **PURCHASES**

At no time shall any purchases be charged to or purchased in the name of the home.

E. **EMERGENCY MASS FEEDING**

The Contractor shall provide emergency mass feeding when requested and directed by the authorities, the cost of which is not to be included in the annual costs otherwise required herein. Any costs or charges in such a mass emergency feeding program shall not be considered part of the original costs under this Contract, but shall be determined in a manner identical to normal operation as listed hereunder and pursuant to applicable items in the Contract. The Contractor will have the option to decline the offer of emergency mass feeding; however will be required to continue normal catering operations to the MYCA.

F. **INSURANCES**

The Contractor shall provide for its own fire, theft, and other required insurance at its own expense to cover its property located on the premises of the home. The Contractor further agrees to provide all necessary theft and/or other insurance to cover clothing, garments, and other articles owned by its employees. In case of fire, or any unforeseen casualty where services of this type are no longer feasible at this location, this contract may be terminated by the State without payment for any claim or damage.

G. **EMERGENCY MENU**

The Contractor shall provide the home with a three-day menu and consistent service plans to provide alternate service in the event of employee strikes, water loss, heat loss, steam or electricity loss, inclement weather, or other events causing food service disruption.

H. **HIPAA**

In the performance of this Contract or purchase order resulting here from, the Contractor agrees to protect the privacy of JVH member's "protected health information (PHI)" to the extent necessary under current federal and state law. The Contractor agrees that it shall not use or disclose any member's PHI for any purpose not expressly stated in this Contract. The Contractor further agrees that any subcontractors or other persons or entities not directly employed by the Contractor shall abide by the terms of this clause. The Contractor shall assure the State it has met the minimum safeguards necessary to protect unauthorized use or disclosure of PHI to any person or entity. Such safeguards shall include the security safeguards including: physical access to PHI, technical access to PHI, and administrative policies and procedures addressing security of PHI.



1.113 STATE RESPONSIBILITIES

The following are services that the MYCA will provide:

- A. Provide the Contractor keys to elevators, lavatories, offices, and other areas necessary to enable the Contractor to fulfill its responsibilities.
- B. Provide the Contractor parking space and lockers for its employees.

1.2 Service Capabilities

1.201 SERVICE REQUIREMENTS

- A. Description of current food production/service system:
 - 1. Cooking method: Conventional scratch cooking methods in combination with convenience food items are utilized to produce meals in a central kitchen.
 - 2. Tray service: Individual meals are portioned via a tray line onto plates and then to disposable five section trays delivered to cadets as they pass through a food service line.

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 Compliance Inspector, 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 will maintain books, records and documents pertaining to costs of this Contract in such detail as to reflect all direct net costs of food, labor, materials, equipment, supplies and services and other expenses for which reimbursement will be claimed. At reasonable times and for a period of at least seven (7) years from the expiration date of the Contract, any records directly pertinent to transactions relating to this Contract shall be available by the Contractor, for inspection, audit or reproduction by any authorized representative of the State. This will include all records relating to litigation of the settlement of claim. These records will be available for review by facility officials.

Examination of Records

The Contractor shall maintain all pertinent financial and accounting records and evidence pertaining to the cost of this Contract in such detail as to reflect all direct net costs of food, labor, materials, equipment, supplies and services and other expenses for which reimbursement will be claimed. Any records directly pertaining to transactions relating to this contract 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 for seven (7) years from expiration date and final payment on the Contract.

These records shall be made available until seven (7) years after final payment under this Contract or by (a) or (b) as follows:

- a) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available until expiration of three (3) years from the date of any resulting final settlement.
- b) Records relating to litigation of the settlement of claims arising out of the performance of this Contract or expenses of this Contract to which exception has been taken by the State officials or any authorized representative shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

Compliance with Laws.

The Contractor shall comply with all applicable ordinances, laws, rules and regulations of DMVA/MYCA, the State of Michigan, the United States of America and any agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules or regulations with respect to the operation of the food services. The Contractor shall also obtain and keep current licenses required for the conduct of its operation.

Compliance with Contract/Notification/Time Period to Cure

- a) The State will monitor for compliance with the Contractor. In the event the Contractor fails to carry out any conditions/agreements to be performed under this Contract, the State will notify the Contractor, in writing, of such failure. If the necessary corrective action is not completed within a ten-day period or the length of period specified in Section II-G, the Contractor must submit, in writing, why corrective action has not been completed. If after notification to the Contractor, the Contractor fails to correct the problem(s) cited by the State in the time period provided, the State shall have all remedies available under this Contract including liquidated damages as provided in Section II-G. Notice to the Contractor and a time period to cure shall not be applicable in the event of successive or repeated breaches of the same nature. The State reserves the right to determine whether or not noncompliance with a requirement of this Contract may be construed as a failure of performance and/or a material breach of the Contract. In the event that attorney's fees or other expenses are incurred by the State to protect or enforce its rights under this Contract, the Contractor agrees to pay said expenses.

- b) The compliance monitoring will be done in the following manner:

The Contract Administrator and/or designee will review all aspects of service as indicated below.

The Contractor's corporate management and the Contract Compliance Inspector shall meet as requested by MYCA to review compliance with all specifications outlined in the Contract including but not limited to:

Meal quality monitoring results.

Compliance with all food safety standards outlined in the specification.

Menu or food item concerns.

Inspection reports submitted by State or other regulatory agencies.

Physical inspection of the Contractor's kitchen.

Budgetary matters.

Other concerns that directly or indirectly pertain to the Contract.

Annual Service Review

Annually an audit of the services provided under the terms of this Contract will be made. The audit will be a joint activity of MYCA designee, DMVA, Buyer Manager, and DMB, Purchasing Operations.

The audit will consist of an evaluation of the total service quality, dependability, response to problems, and other specifics as required under the terms of the Contract. The results of the audit along with recommendations will be published by DMB, Purchasing Operations and distributed to MYCA and the Contractor(s).

Deficiencies found in the audit shall be considered a Notice to Cure as provided in Section II-HH. Failure to cure these deficiencies may be considered a material breach of the Contract. The Contractor shall respond within 10 days to any deficiencies found in the audit with a written plan to correct the deficiencies and a time frame for completion.

Should the Contractor desire, a meeting will be arranged between all concerned parties within ten (10) calendar days of the date the Contractor received, or could have reasonably been expected to receive his/her copy of the audit. This meeting will provide an opportunity for the Contractor to present his/her reactions to audit recommendations.



In addition to the above, 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 SECURITY

This Contract will require frequent deliveries to State of Michigan facilities. The Contractor shall utilize procedures to ensure the security and safety of the building. This shall include, but is not limited to, performance of security background checks on all personnel assigned to the MYCA. The Contractor's personnel will be required to wear appropriate ID badges at all times. Upon request by the State, the Contractor shall provide the results of all security background checks.

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

1.4 Project Price

1.401 PRICING

Prices are a charge per resident day on a sliding scale basis of meals served three (3) times per day as indicated below.

ITEM NO.	REGULAR DIET	BREAKFAST	LUNCH	DINNER	TOTAL MEAL COST PER RESIDENT
1.	50-75 Residents	\$ 3.65	\$ 3.80	\$ 4.00	\$ 11.45
2.	76-100 Residents	\$ 3.65	\$ 3.80	\$ 4.00	\$ 11.45
3.	101-125 Residents	\$ 3.65	\$ 3.80	\$ 4.00	\$ 11.45
4.	126+ Residents	\$ 3.65	\$ 3.80	\$ 4.00	\$ 11.45

ITEM NO.	MODIFIED DIET	BREAKFAST	LUNCH	DINNER	TOTAL MEAL COST PER RESIDENT
1.	UNKNOWN	\$ 3.65	\$ 3.80	\$ 4.00	\$11.45



Provide the percentages for the following categories based on the above quoted residents total daily per diem rate, based on 100 residents.

1)	Labor Costs	\$423.65	37%
2)	Food Cost	\$469.45	41%
3)	Supplies and Materials (other than Food)	\$91.60	8%
4)	Supplies, Materials & Equipment	\$80.15	7%
5)	Overhead & Profit	\$80.15	7%

1.402 PRICE TERM

Prices 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. Purchasing Operations 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). Purchasing Operations 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.



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

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

2.002 ISSUING OFFICE/CONTRACT ADMINISTRATOR/CONTRACT COMPLIANCE INSPECTOR

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Department of Military and Veteran Affairs (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Jim Wilson
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: wilsonj4@michigan.gov
Phone: 517-241-1916

The person named below, or any other person so designated, will be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Department of Military and Veterans Affairs
Office of Financial Services – Purchasing and Contracts Section
Attn: Kimberly Graham, Buyer Manager
2nd Floor
2500 S. Washington Avenue
Lansing, Michigan 48913
Telephone: (517) 483-5803 Fax: (517) 483-5881
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 beginning February 12, 2008 through December 31, 2010.



Option. The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the Contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

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

Written notice will be provided to the Contractor within thirty (30) days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Contract expires. The preliminary notice does not commit the State to an extension. If the State 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.

2.1 Vendor/Contractor Obligations**2.101 ACCOUNTING RECORDS**

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

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.
2. The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

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

2.103 SOFTWARE COMPLIANCE-RESERVED**2.104 RESERVED****2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)-RESERVED****2.106 PREVAILING WAGE-RESERVED****2.107 PAYROLL AND BASIC RECORDS-RESERVED****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-RESERVED**2.2 Contract Performance****2.201 TIME IS OF THE ESSENCE-RESERVED****2.202 CONTRACT PAYMENT SCHEDULE**

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

**2.203 POSSIBLE PROGRESS PAYMENTS-RESERVED****2.204 STATE ADMINISTRATIVE FEE -RESERVED****2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is MANDATORY for State Contractors. Vendor is required 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 MIIDEAL PROGRAM - RESERVED**2.3 Contract Rights and Obligations****2.301 INCURRING COSTS**

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

2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

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

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

Bidder must obtain the approval of the Director of Purchasing Operations 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 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 Stateal 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 Stateal 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 10 days after the State's receipt of Contractor' s information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.306 LIMITATION OF LIABILITY

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

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

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY-RESERVED

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 LIABILITY INSURANCE

A. Insurance

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



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

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

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

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

See www.michigan.gov/cis

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

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

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

1. Commercial General Liability with the following minimum coverage:

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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED(S) 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

B. Subcontractors

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

C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, 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 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.311 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.

2.312 WORKPLACE DISCRIMINATION

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

Vendor hereby represents that in performing this Contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

2.313 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 RESERVED



2.402 PERFORMANCE REVIEWS

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

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

2.502 QUALITY ASSURANCE

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-RESERVED

2.506 STAFF-RESERVED

2.507 RESERVED

2.508 EQUIPMENT WARRANTY-RESERVED

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another Contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay,



and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

2.7 Remedies

2.701 CANCELLATION

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

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

In the event that this Contract is 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 within this Contract agreement.

2.703 LIQUIDATED DAMAGES-RESERVED

2.704 STOP WORK-RESERVED

2.705 SUSPENSION OF WORK-RESERVED



2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

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

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this Contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. The Contract Compliance Inspector 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 three (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 State-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.