



Michigan Department of Natural Resources – Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 525 W. Allegan, Lansing, MI 48933

CHANGE NOTICE NO. 1 TO CONTRACT NO. 751B3200064
Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor Bink's Coca-Cola Bottling Company 3001 Danforth Road Escanaba, MI 49829	Primary Contact Nick Bink
	Email nick@binksbeverages.com
	Telephone 906-786-4144
Contractor #, Mail Code 2XXXXX0900 / 001	

State Contact	Agency	Name	Telephone	Email
Project Manager	Fayette Historic State Park	Randy Brown	906-644-2603	BrownR1@michigan.gov
Contract Administrator/Buyer	Procurement Services	Ruth Thole	517-284-5973	tholer@michigan.gov

Initial Contract Summary

Bottled Soft Drinks – for resale at Fayette Historic State Park			
Effective Date 05/10/2013	Initial Expiration Date 03/31/2015	Initial Available Options Three 1-year	Expiration Date Prior to Change 03/31/2015
Payment Terms Net 30 Days	F.O.B. Destination	Delivery As needed	Shipped From N/A
Minimum Delivery Requirements 1 case		Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)	Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Description of Change Notice

Option Exercised: Yes No If Yes, New Expiration Date: 03/31/2016

Effective immediately, the following changes are made to this Contract:

- The first of three available option years is exercised and the Contract is extended through March 31, 2016.
- Prices are increased per the attached Price Sheet.
- The Buyer's telephone number is changed to 517-284-5973.

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

Per agency request, vendor agreement and Procurement Services approval.

Value/Cost of Change Notice \$.00	Estimated Revised Aggregate Contract Value \$8,000.00
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FOR THE CONTRACTOR:

Bink's Coca-Cola Bottling Company

 Authorized Agent Signature

Nick Bink
 Authorized Agent

Date 2/24/15

FOR THE STATE:

Department of Natural Resources

 Authorized Buyer Signature

Ruth Thole / Buyer
 Authorized Buyer (Print or Type)

Date 2/25/15

Attachment to Change Notice 1 to Contract 751B3200064
REVISED Pricing
Effective February 23, 2015

	Bottle Size	Price per Case
Carbonated Soda: (Coca-Cola products)	20 oz	\$ 20.35
Non-carbonated drinks: (Lemonade, Iced tea etc.)	20 oz	\$ 20.35
Sports drinks (Powerade, etc.)	20 oz	\$ 20.35
Enhanced water (Vitaminwater, etc.)	20 oz	\$ 25.95
Water (Dasani, etc.)	20 oz	\$ 15.95
Bottle deposit on carbonated soda	20 oz	\$ 2.40



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 OF
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 Between
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 and**

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	Email nick@binksbeverages.com	
	Telephone 906-786-4144	Contractor #, Mail Code XXXXX0900 / 001

State Contact	DNR Agency	Name	Telephone	Email
Project Manager	Fayette Historic State Park	Randy Brown	906-644-2603	BrownR1@michigan.gov
Contract Administrator/Buyer	Procurement Services	Ruth Thole	517-335-1553	TholeR@michigan.gov

Contract Summary			
Bottled Soft Drinks – for resale at Fayette Historic State Park			
Initial Term Approx. 2 years	Effective Date May 10, 2013	Initial Expiration Date March 31, 2015	Available Options Three 1-year
Payment Terms Net 30 Days	F.O.B. Destination	Delivery As needed	Shipped From N/A
Minimum Delivery Requirements 1 case		Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)	Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Miscellaneous Information The terms and conditions of this Contract are those of solicitation # ITB-RT-PRD-751R3200818, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence. ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$8,000.00			

The terms and conditions of this Contract are attached.



Michigan Department of Natural Resources – Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 530 W. Allegan, Lansing, MI 48933

CONTRACT NO. 751B3200064

**Between
 STATE OF MICHIGAN**

and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor Bink's Coca-Cola Bottling Company 3001 Danforth Road Escanaba, MI 49829	Primary Contact Nick Bink	
	Email nick@binksbeverages.com	
	Telephone 906-786-4144	Contractor #, Mail Code XXXXX0900 / 001

State Contact	DNR Agency	Name	Telephone	Email
Project Manager	Fayette Historic State Park	Randy Brown	906-644-2603	BrownR1@michigan.gov
Contract Administrator/Buyer	Procurement Services	Ruth Thole	517-335-1553	TholeR@michigan.gov

Contract Summary

Bottled Soft Drinks – for resale at Fayette Historic State Park

Initial Term Approx. 2 years	Effective Date May 10, 2013	Initial Expiration Date March 31, 2015	Available Options Three 1-year
Payment Terms Net 30 Days	F.O.B. Destination	Delivery As needed	Shipped From N/A
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Miscellaneous Information
 The terms and conditions of this Contract are those of solicitation # ITB-RT-PRD-751R3200818, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$8,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our Inquiry bearing the solicitation No. ITB-RT-PRD-751R3200818. Orders for delivery will be issued directly by the Michigan Department of Natural Resources through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:

Bink's Coca-Cola Bottling Company

Firm Name

Authorized Agent Signature
Nick Bink

Authorized Agent (Print or Type)
5/10/13

Date

FOR THE STATE:

Department of Natural Resources

Signature
Ruth Thole / Buyer

Name/Title
5/10/13

Date



STATE OF MICHIGAN
Department of Natural Resources
Procurement Services

Contract 751B3200064
Bottled Soft Drinks
For Fayette Historic State Park

Buyer Name: Ruth Thole
Telephone Number: 517-335-1553
E-Mail Address: tholer@michigan.gov

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Article 1 – Statement of Work

1.1 Project Identification

1.1.1 Project Request

This is a Contract for bottled soft drinks for the purpose of retail sale at Fayette Historic State Park. As part of the contract, Contractor must provide and maintain, at no cost to the State Park, one vending machine and one refrigerator for product.

1.1.2 Background

To meet the needs of park visitors, Fayette Historic State Park offers soft drinks for sale, through vending machine sales and park store sales. Sales of soft drinks provide goods and services to park visitors and also provide a source of revenue for the park.

1.2 Scope of Work and Deliverable(s)

1.2.1 Deliverable(s)

Contractor must provide the following Deliverable(s):

- (a) Carbonated soda pop soft drinks:
 - i) Must be in 20 ounce plastic bottles.
 - ii) Must have regular and diet varieties.
 - iii) Must have caffeine-free varieties.
- (b) Non-carbonated soft drinks, including Sports drinks and Enhanced water:
 - i) Must be in 16 to 24 ounce plastic bottles.
 - ii) Must have regular and diet varieties.
 - iii) Must be able fit in vending machine provided by Contractor.
- (c) One DN 5000 vending machine:
 - i) Must be provided and maintained at no cost to the State Park.
 - ii) Must be placed outside of building; DNR Project Manager to determine location of machine.
 - iii) Must be delivered prior to May 7 and removed from the site on or near October 31 each year of the contract term.
- (d) One True Manufacturing Model GDM-14RD or equivalent refrigerator/cooler:
 - i) Must be placed inside Visitor Center store.
 - ii) Must be provided and maintained at no cost to the State Park.
 - iii) Must be delivered prior to May 7 and removed from the site on or near October 31 each year of the contract term.

Additional Requirements:

- (a) State Park will order and purchase product, stock coolers and vending machines, and retain all revenue generated from the sale of bottled soft drinks.
- (b) Contractor will maintain vending and refrigerator cooler machines to be fully functional at all times. State Park will notify Contractor by telephone when any machine becomes out of order. Malfunctioning machine must be repaired or replaced within 48 hours after Contractor is notified by State Park.

1.2.2 Quantity

The State is not obligated to purchase in any specific quantity.

1.2.3 Ordering

Each year of the contract term, the State Park will issue a blanket purchase order with estimated quantity to cover the “season”, May 7 through October 31. The Contractor is not authorized to begin performance until receipt of a Purchase Order. The DNR Project Manager, or designee, will contact the Contractor to schedule delivery as needed.

1.3 Delivery and Acceptance

1.3.1 Time Frames

Delivery of bottled soft drinks will be conducted on an on-call basis according to a schedule agreed upon by the DNR Project Manager and the Contractor. Upon award of Contract, the DNR Project Manager and Contractor will determine day of week delivery is available and when order must be placed to meet the delivery day. The DNR Project Manager, or designee, will notify Contractor by email or fax to schedule delivery as needed.

1.3.2 Minimum Order

The State requests a minimum order requirement of one case.

1.3.3 Packaging

All items must be packaged in 20 to 24 ounce plastic bottles; 24 bottles per case. Carbonated drinks must be packaged in 20 ounce returnable bottles, identified with Michigan's 10¢ bottle deposit.

1.3.4 Delivery Term

Prices quoted must be "F.O.B. Destination" with transportation charges prepaid on all orders. No additional miscellaneous fees (fuel surcharge, administrative fee, etc.) will be allowed.

Contractor will deliver bottled soft drinks to A. Gene Gazlay Visitor Center located within Fayette Historic State Park. Contractor will unload and place goods in the Visitor Center storage room. Contractor will pick up empty carbonated drink bottles to be returned for credit of bottle deposit.

1.3.5 Acceptance Process

Delivery of goods will be monitored by a State Park employee. Each delivery must be acknowledged by a State Park employee signing a delivery receipt.

1.4 Proposal Pricing

1.4.1 Pricing

For pricing details see **Attachment A – Price Sheet**.

1.4.2 Quick Payment Terms

No quick payment terms are offered. Payment terms are Net 30 Days.

1.4.3 Price Term

Prices are firm for the **initial term** of the Contract.

Prices may be subject to change at the time a contract extension option is executed. 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. The DNR 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). The DNR 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 time a second contract extension option is executed.

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.

1.4.4 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DNR Procurement Services will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the Contractor's prices must not include the Federal Excise Tax.

1.4.5 Invoices

Invoices must be itemized and must clearly indicate date of delivery, number of cases delivered, number of empty bottles returned, unit cost, and extended cost. A copy of a signed receipt for each delivery must accompany invoice. Invoiced amounts shall be per Contract prices only; **no additional or miscellaneous charges are allowed.**

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins May 10, 2013 and expires March 31, 2015.

2.1.2 Options to Renew

This Contract may be renewed for up to three additional one year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of the Contract.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s).

2.2.2 Payment Deadlines

Payment terms are Net 30 Days. If agreed net payment term is less than 45 days, in accordance with the State's standard procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., payments made within 45 days after receipt of invoice are not subject to penalty.

2.2.3 Electronic Payment Requirement

As required by Public Act 533 of 2004, payments under the Contract must be processed by electronic funds transfer (EFT).

2.2.4 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.2.5 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by Department of Natural Resources, Procurement Services. **DNR Procurement Services is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DNR Procurement Services for this Contract is:

Ruth Thole, Buyer
 Department of Natural Resources
 Procurement Services
 P. O. Box 30028
 Lansing, MI 48909
 E-mail: tholer@michigan.gov

Phone: 517-337-1553
Fax: 517-373-6507

2.3.2 Project Manager

The Project Manager, named below, will oversee the project. However, management of the project implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Randy Brown, Park Supervisor
Department of Natural Resources
Fayette Historic State Park
13700 13.25 Lane
Garden, MI 49835
906-644-2603
Brownr1@michigan.gov

2.3.3 Contract Changes

The Contract may be modified provided that any changes proposed by either party are requested in writing and mutually agreed to by the Contractor and DNR Procurement Services. The request is not valid until it is signed by all parties, a Contract Change Notice is executed and a Purchase Order is issued by the Department of Natural Resources.

No proposed change may be performed until DNR Procurement Services issues a duly executed Contract Change Notice for the proposed change.

2.3.4 Price Changes

Contractor may request a price change at the time a contract extension option is executed to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

Any price changes must be implemented through the issuance of a Contract Change Notice.

2.3.5 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DNR-Procurement Services
Attention: Ruth Thole, Buyer
530 W. Allegan St.
P. O. Box 30028
Lansing, MI 48909
E-mail: tholer@michigan.gov
Fax: 517-373-6507

If to Contractor:

Bink's Coca-Cola Bottling Company
Attention: Nick Bink
3001 Danforth Road
Escanaba, MI 49829
E-mail: nick@binksbeverages.com
Fax: 906-786-6450

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.6 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

2.3.7 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.4 Subcontracting by Contractor

2.4.1 Contractor Responsible

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.4.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DNR Procurement Services gives prior approval to the delegation. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement

2.5 Records and Inspections

2.5.1 Retention of Records

The Contractor will be required to maintain all pertinent financial and accounting records and evidence pertaining to this 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 within the duration of this Contract and any extension thereof, and for three (3) years from the expiration date and final payment on this Contract or extension thereof.

2.5.2 Examination of Records

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 this Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the requirements of this Contract.

2.6 Warranties

2.6.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) It is the lawful owner or licensee of any Deliverable sold to the State by Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(c) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(d) It is qualified and registered to transact business in all locations where required.

(e) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(f) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the Contract.

2.6.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

2.6.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

2.6.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

2.6.5 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DNR Procurement Services has approved a change order.

2.6.6 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.6, Warranties, the breach may be considered a material default.

2.7 Insurance

2.7.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

(e) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions.

(f) The Contractor must provide, within five (5) business days, written notice to DNR Procurement Services if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.

(g) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(h) The Contractor is responsible for the payment of all deductibles.

(i) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(j) 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 Michigan Attorney General.

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

(a) Commercial General Liability with the following minimum coverages:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations

\$2,000,000 Products/Completed Operations Aggregate Limit

\$1,000,000 Personal & Advertising Injury Limit

\$1,000,000 Each Occurrence Limit

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

(b) If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance 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.

(c) 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, the 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.

- (d) Employers liability insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

(Please note: minimum insurance requirements for low risk projects may be negotiable with State.)

2.7.2 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide DNR Procurement Services with all applicable certificates of insurance verifying insurance coverage as required in Section 2.7.1, Liability Insurance. Each certificate must be on the standard "Acord" form or equivalent and **MUST IDENTIFY THE APPLICABLE CONTRACT NUMBER.**

2.8 Indemnification

2.8.1 General Indemnification

The Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.8.2 Employee Indemnification

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will 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 benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, 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 provisions.

2.8.3 Patent/Copyright Infringement Indemnification

(a) The Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

2.8.4 Continuing Obligation

The Contractor's duty to indemnify under Section 2.8, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.9 Termination by the State

2.9.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a 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.

2.9.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations; or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.9.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any ITB issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

2.9.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s)

in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.9.5 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if 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 related to a State, public, or private Contract or subcontract.

2.9.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.9.7 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must:

- i) stop all work as specified in the notice of termination;
- ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
- iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
- iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
- v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
- vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.10 Termination by the Contractor

2.10.1 Termination

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

2.11 Laws

2.11.1 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

2.11.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

2.11.3 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.11.4 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her 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, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

2.11.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.11.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer

of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.11.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

2.11.8 Abusive Labor Practices

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

2.12 General Provisions

2.12.1 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.12.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

2.12.3 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

2.12.4 Legal Effect

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.3, Ordering.

2.12.5 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.12.6 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.12.7 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

2.12.8 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

2.12.9 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.12.10 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

Attachment A - Price Sheet

	Bottle Size	Price per Case
Carbonated Soda: (Coca-Cola products)	20 oz	\$ 19.95
Non-carbonated drinks: (Lemonade, Iced tea etc.)	20 oz	\$ 19.95
Sports drinks (Powerade, etc.)	20 oz	\$ 19.95
Enhanced water (Vitaminwater, etc.)	20 oz	\$ 25.95
Water (Dasani, etc.)	20 oz	\$ 15.95
Bottle deposit on carbonated soda	20 oz	\$ 2.40