# STATE OF MICHIGAN
# Department of Corrections
# Michigan State Industries
# Purchasing Division

Invitation to Bid No. 472I8200016
Supplex® Fabric With Waterproof Coating

Buyer Name: Ruth Thole
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**Estimated Timeline:**

| **Key Milestone:** | **Date:** |
|---|---|
| Issue Date | 3/5/08 |
| Questions Due | 3/18/08 |
| Bid Due Date | 4/2/08 |

**ITB Checklist for Bidder Proposal Contents and Responsiveness**

This checklist is provided as a convenience for your proposal preparation. Please review the items below and return your proposal as outlined under Submission of Proposal. If you have any questions concerning these requirements, please contact the buyer for this particular ITB listed on the front page of this document.

**Article 1:**

_____ Responses have been provided for all items requested in Article 1, Statement of Work, as requested. Verify that all requirements have been met and responses are included within the format designated in Section 4.3. Make special note of Sections 1.002, 1.103, 1.104, 1.201, 1.203, 1.401, and 1.402.

_____ Each section has been reviewed and information of any proposed variances from requirements has been provided. Pay special attention to Sections 1.205, 1.301, 1.302 and 1.305.

**Article 2:**

_____ Acknowledgment and/or concurrence with each term and condition listed in Article 2 of the ITB document has been provided within your proposal, with any comments or issues clearly identified.

**Article 3:**

_____ Complete all items contained in Article 3, Certifications and Representations, initialing each paragraph requiring an initialed response, acknowledging each certification & representation, and providing all required information.

_____ Certificate of Insurance has been included as outlined in Section 3.307.

**Article 4:**

_____ All items in the Proposal Format (Article 4.3) have been completed. Pay close attention to items identified in Article 4.601 Method of Award/Selection Criteria, as these are significant items in the evaluation process.

_____ Item Listing/Pricing Page (Article 4.605) has been completed and included in your proposal.

**Invitation To Bid (ITB) – DMB Form 285**

_____ Company name and address have been provided in the blank box on the upper left hand side of Page 1 and the form has been signed.

_____ Information has been provided for Cash Discount, Shipment Days ARO (after receipt of order), F.O.B. Shipping Point, Estimated Ship Weight and Total Bid Amount.

**Submission of Proposal Packet:**

_____ Proposal, Invitation To Bid, a copy of the Certifications and Representations (Article 3), Certificate of Insurance, and the Item Listing/Pricing Page from Article 4 are included with packet. Samples included with Bid if required. Please download all necessary documents that pertain to your bid and especially addendums that may have been done at a later date from when the ITB was first posted.

_____ Proposal packet was submitted to the appropriate location on time per the schedule of the ITB, with one signed original, the appropriate number of additional copies, and the instructed number of copies of the electronic version on CD Rom.

# Fabric, Supplex® With Waterproof Coating


**Article1 – Statement of Work (SOW) ..... 1**
1.0 Introduction ..... 1
**1.001 DEFINING DOCUMENT ..... 1**
**1.002 PROJECT TITLE AND DESCRIPTION ..... 1**
**1.003 PROJECT CONTROL ..... 1**
**1.004 COMMENCEMENT OF WORK ..... 1**
1.1 Product Quality ..... 1
**1.101 SPECIFICATIONS ..... 1**
**1.102 RESEARCH AND DEVELOPMENT-RESERVED ..... 2**
**1.103 QUALITY ASSURANCE PROGRAM ..... 2**
**1.104 WARRANTY FOR PRODUCTS OR SERVICES ..... 2**
1.2 Service Capabilities ..... 2
**1.201 CUSTOMER SERVICE/ORDERING ..... 2**
**1.202 TRAINING-RESERVED ..... 2**
**1.203 REPORTING ..... 2**
**1.204 SPECIAL PROGRAMS ..... 2**
**1.205 SECURITY ..... 3**
1.3 Delivery Capabilities ..... 3
**1.301 TIME FRAMES ..... 3**
**1.302 MINIMUM ORDER ..... 3**
**1.303 PACKAGING ..... 3**
**1.304 PALLETIZING ..... 3**
**1.305 DELIVERY TERM ..... 4**
**1.306 ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION- RESERVED ..... 4**
1.4 Project Price ..... 4
**1.401 PROPOSAL PRICING ..... 4**
**1.402 QUICK PAYMENT TERMS ..... 4**
**1.403 PRICE TERM ..... 4**
1.5 Quantity term ..... 5
1.6 Other Terms and Conditions Needed for the Contract-RESERVED ..... 5
**Article 2 – General Terms and Conditions ..... 6**
2.0 Introduction ..... 6
**2.001 GENERAL PURPOSE ..... 6**
**2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR ..... 6**
**2.003 NOTICE ..... 6**
**2.004 CONTRACT TERM ..... 6**
**2.005 GOVERNING LAW ..... 7**
**2.006 APPLICABLE STATUTES ..... 7**
**2.007 RELATIONSHIP OF THE PARTIES ..... 7**
**2.008 HEADINGS ..... 7**
**2.009 MERGER ..... 8**
**2.010 SEVERABILITY ..... 8**
**2.011 SURVIVORSHIP ..... 8**
**2.012 NO WAIVER OF DEFAULT ..... 8**
**2.013 PURCHASE ORDERS ..... 8**
2.1 Bidder/Contractor Obligations ..... 8
**2.101 ACCOUNTING RECORDS ..... 8**
**2.102 NOTIFICATION OF OWNERSHIP ..... 8**
**2.103 SOFTWARE COMPLIANCE-RESERVED ..... 9**
**2.104 RESERVED ..... 9**
**2.105 PERFORMANCE AND RELIABILTIY EVALUATION (PARE)-RESERVED ..... 9**
**2.106 PREVAILING WAGE-RESERVED ..... 9**
**2.107 PAYROLL AND BASIC RECORDS-RESERVED ..... 9**
**2.108 COMPETITION IN SUB - CONTRACTING ..... 9**
**2.109 CALL CENTER DISCLOSURE ..... 9**
2.2 Contract Performance ..... 9

**2.201 TIME IS OF THE ESSENCE ..... 9**
**2.202 CONTRACT PAYMENT SCHEDULE ..... 9**
**2.203 POSSIBLE PROGRESS PAYMENTS-RESERVED ..... 9**
**2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)-RESERVED ..... 9**
**2.205 ELECTRONIC PAYMENT AVAILABILITY ..... 9**
**2.206 PERFORMANCE OF WORK BY CONTRACTOR-RESERVED ..... 9**
2.3 Contract Rights and Obligations ..... 10
**2.301 INCURRING COSTS ..... 10**
**2.302 CONTRACTOR RESPONSIBILITIES ..... 10**
**2.303 ASSIGNMENT AND DELEGATION ..... 10**
**2.304 TAXES ..... 10**
**2.305 INDEMNIFICATION ..... 10**
**2.306 LIMITATION OF LIABILITY ..... 13**
**2.307 CONTRACT DISTRIBUTION ..... 13**
**2.308 FORM, FUNCTION, AND UTILITY ..... 13**
**2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION ..... 13**
**2.310 PURCHASING FROM OTHER STATE AGENCIES-RESERVED ..... 13**
**2.311 TRANSITION ASSISTANCE ..... 13**
**2.312 RESERVED ..... 13**
**2.313 RESERVED ..... 13**
**2.314 WEBSITE INCORPORATION ..... 13**
2.4 Contract Review and Evaluation ..... 14
**2.401 CONTRACT COMPLIANCE INSPECTOR ..... 14**
**2.402 PERFORMANCE REVIEWS ..... 14**
**2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS ..... 14**
2.5 Quality and Warranties ..... 14
**2.501 PROHIBITED PRODUCTS ..... 14**
**2.502 QUALITY ASSURANCE ..... 14**
**2.503 INSPECTION ..... 14**
**2.504 GENERAL WARRANTIES (GOODS) ..... 15**
**2.505 CONTRACTOR WARRANTIES-RESERVED ..... 15**
**2.506 STAFF-RESERVED ..... 15**
**2.507 RESERVED ..... 15**
**2.508 EQUIPMENT WARRANTY-RESERVED ..... 15**
**2.509 RESERVED ..... 15**
2.6 Breach of Contract ..... 15
**2.601 BREACH DEFINED ..... 15**
**2.602 NOTICE AND THE RIGHT TO CURE ..... 15**
**2.603 EXCUSABLE FAILURE ..... 15**
2.7 Remedies ..... 16
**2.701 CANCELLATION ..... 16**
**2.702 RIGHTS UPON CANCELLATION ..... 17**
**2.703 LIQUIDATED DAMAGES-RESERVED ..... 17**
**2.704 STOP WORK-RESERVED ..... 17**
**2.705 SUSPENSION OF WORK-RESERVED ..... 17**
2.8 Changes, Modifications, and Amendments ..... 17
**2.801 APPROVALS ..... 17**
**2.802 TIME EXTENTIONS-RESERVED ..... 17**
**2.803 MODIFICATION ..... 17**
**2.804 AUDIT AND RECORDS UPON MODIFICATION ..... 18**
**2.805 CHANGES ..... 18**
**Article 3 – Certifications and Representations ..... 19**
3.0 Bidder/Contractor Information ..... 19
**3.001 TAXPAYER IDENTIFICATION NUMBER (TIN) ..... 19**
**3.002 EXPATRIATED BUSINESS ENTITY ..... 19**
**3.003 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER ..... 20**
**3.004 BIDDER REGISTRATION INTO A CENTRAL DATABASE-RESERVED ..... 20**
**3.005 ANNUAL CERTIFICATIONS AND REPRESENTATIONS IN CENTRAL DATA BASE ..... 20**

**3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING-RESERVED ..... 20**
3.1 Disclosure Issues ..... 20
**3.101 CONFIDENTIALITY ..... 20**
**3.102 FREEDOM OF INFORMATION ACT ..... 22**
**3.103 DISCLOSURE OF LITIGATION-RESERVED ..... 22**
3.2 Vendor/Contractor Compliance with Laws ..... 22
**3.201 GENERALLY ..... 22**
**3.202 INDEPENDENT PRICE DETERMINATION ..... 22**
**3.203 BIDDER/CONTRACTOR COMPLIANCE WITH STATE AND FEDERAL LAW AND DEBARMENT ..... 22**
**3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT ..... 23**
**3.205 DEBARMENT OF SUB-CONTRACTORS ..... 24**
**3.206 ETHICS: GRATUITIES and INFLUENCE ..... 24**
3.3 Bidder/Contractor Workplace Fitness ..... 24
**3.301 DRUG-FREE WORK PLACE ..... 24**
**3.302 WORKPLACE SAFETY-RESERVED ..... 25**
**3.303 WORKPLACE DISCRIMINATION ..... 25**
**3.304 LABOR RELATIONS ..... 25**
**3.305 RESERVED ..... 25**
**3.306 AFFIRMATIVE ACTION ..... 26**
**3.307 LIABILITY INSURANCE ..... 26**
**3.308 ENVIRONMENTAL AWARENESS-RESERVED ..... 28**
**3.309 KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS ..... 28**
**3.310 FORCED LABOR, CONVICT LABOR, OR INDENTURED SERVITUDE MADE MATERIALS 29**
3.4 Bidder/Contractor Demographics ..... 29
**3.401 SMALL BUSINESS REPRESENTATION ..... 29**
**3.402 WOMEN, MINORITY, OR VETERAN-OWNED SMALL BUSINESS REPRESENTATION ..... 29**
**3.403 OWNERS AND OFFICERS ..... 30**
**3.404 RESERVED ..... 30**
3.5 State Concerns ..... 30
**3.501 GENERAL COMPANY DEMOGRAPHICS ..... 30**
**3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES ..... 30**
**3.503 COMMUNITY REHABILITATION ORGANIZATION (Formerly Sheltered workshops) ..... 31**
**3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS ..... 31**
**3.505 PLACE OF PERFORMANCE ..... 31**
**3.506 FORMER STATE EMPLOYEES ..... 32**
**3.507 DOMESTIC END PRODUCT ..... 32**
**3.508 USE TAX ..... 32**
**3.509 TAX EXCLUDED FROM PRICE ..... 33**
**3.510 TAX PAYMENT ..... 33**
**3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS ..... 33**
**3.512 UTILIZATION OF BUSINESS CONCERNS ..... 34**
**3.513 RESERVED ..... 34**
**3.514 RESERVED ..... 34**
**3.515 PLACE OF SUBCONTRACTING ..... 34**
**3.516 RESERVED ..... 34**
**3.517 SERVICES NEEDED IN PERFORMANCE ..... 34**
**3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP ..... 35**
3.6 Changes to Disclosures ..... 35
3.7 State Assertions ..... 35
**Article 4 – The Bidding Process ..... 36**
4.0 Introduction ..... 36
**4.001 PRE BID MEETINGS AND QUESTIONS ..... 36**
**4.002 PRICE AND NOTATIONS ..... 36**
**4.003 DOUBLE SIDED ON RECYCLED PAPER ..... 36**
4.1 Proposal Details ..... 36
**4.101 GENERALLY ..... 36**
**4.102 EFFICIENT PROPOSAL ..... 36**

**4.103 CHANGES** ..... **36**
4.2 Possible Bond Requirements ..... 37
**4.201 BID BOND - RESERVED** ..... **37**
**4.202 PERFORMANCE BOND - RESERVED** ..... **37**
**4.203 PAYMENT BOND - RESERVED** ..... **37**
**4.204 MAINTENANCE BOND – RESERVED** ..... **37**
4.3 Proposal Format ..... 37
**4.301 COMPANY INFORMATION/CAPABILITIES** ..... **37**
**4.302 PRIOR EXPERIENCE** ..... **37**
**4.303 STAFFING** ..... **37**
**4.304 PRODUCT QUALITY (see Article 1)** ..... **38**
**4.305 SERVICE CAPABILITIES (see Article 1)** ..... **38**
**4.306 DELIVERY CAPABILITIES (see Article 1)** ..... **38**
**4.307 PROJECT PRICE (see Article 1)** ..... **38**
**4.309 COMPLETION OF ARTICLE 3 – CERTIFICATIONS AND REPRESENTATIONS** ..... **38**
4.4 Submitting Bids and Proposals ..... 38
**4.401 BID RECEIPT** ..... **38**
**4.402 PROPOSAL SUBMISSION** ..... **38**
4.5 Additional Considerations ..... 39
**4.501 PAST PERFORMANCE** ..... **39**
**4.502 FINANCIAL STABILITY** ..... **39**
**4.503 SAMPLES/MODELS** ..... **39**
**4.504 CLARIFICATIONS** ..... **40**
**4.505 ORAL PRESENTATION** ..... **40**
**4.506 SITE VISIT** ..... **40**
4.6 Award Process ..... 40
**4.601 METHOD OF AWARD/SELECTION CRITERIA** ..... **40**
**4.602 RECIPROCAL PREFERENCE** ..... **41**
**4.603 STATE ADMINISTRATIVE BOARD** ..... **41**
**4.604 PROTESTS** ..... **41**
**4.605 ITEM LISTING/PRICING PAGE** ..... **42**

# Article1 – Statement of Work (SOW)

## 1.0 Introduction

### 1.001 DEFINING DOCUMENT

This is an Invitation To Bid (ITB). This is a formal request to prospective bidders soliciting bids or price quotations. This document contains or incorporates defined requirements, the specifications and scope of work, and all contractual terms and conditions. Bid evaluation and award will depend upon which bidder represents the best value for the State of Michigan, Department of Corrections, Michigan State Industries hereinafter known as MSI.

### 1.002 PROJECT TITLE AND DESCRIPTION

The purpose of this ITB is to solicit proposals to establish a Contract for Supplex® fabric with water proofing, for MSI. Vendors should be aware that the term "Contract" used hereafter within this document refers to a PROPOSED Contract. Article 1 is designed to provide vendors with information on requirements associated with this ITB.

Article 1 will be used by MSI for the evaluation process. Vendors will be submitting written proposals discussing how they meet the below specific requirements.

If any part of the Specific Requirements appears to be excessive, with respect to the overall outcome desired by MSI, please notify the buyer in writing for consideration of a possible change to the requirements (see 4.001).

### 1.003 PROJECT CONTROL

The Contractor will carry out this project under the direction and control of MSI.

### 1.004 COMMENCEMENT OF WORK

Contractor shall show acceptance of this agreement by signing two copies of the resulting Contract and returning them to MSI Purchasing. Contractor shall not proceed with any work to be done under any resulting agreement, including the purchase of necessary materials, until both parties have signed the agreement to show acceptance of its terms.

## 1.1 Product Quality

### 1.101 SPECIFICATIONS

All commodities to be furnished hereunder shall conform to the specifications as noted below, in the "Invitation to Bid", and in the Item Listing/Pricing Page (Section 4.605).

**Fabric; Supplex® with waterproof coating**

**Fabric: 70 Denier, 2 ply Supplex®, mid dull nylon filling, dyed to a 2A wash fastness rating 3 (minimum).**
**Thread Count: 144 x 68.**
**Color: Black**
**Coating: Breathable Hydrophilic.**
**Weight: 1-1/2 oz.**
**Finish: HT Teflon**
**Cuttable Width: 58"**
**1" of selvage shall be trimmed from each side to allow material to lay flat when cutting.**

**Fabric and coating must be tapeable to allow seams to be water proofed.**

**All rolls must be individually wrapped in clear plastic bags with yardage clearly and securely marked on all rolls. A packing slip must be enclosed in envelope attached to outer side of bag for easy access.**

**All items must meet the factory superintendent's approval. Overages/shortages in excess of 5% will not be accepted.**

**Delivery times: Monday through Friday, 7:30 a.m. to 2:00 p.m., except for State holidays.**

**1.102 RESEARCH AND DEVELOPMENT-RESERVED**

**1.103 QUALITY ASSURANCE PROGRAM**

Vendors shall provide details regarding any Quality Assurance Program(s) that are currently in place within their organization.

**1.104 WARRANTY FOR PRODUCTS OR SERVICES**

Vendors shall discuss all aspects of their warranty. This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the Contract. Vendors shall also discuss how they will handle any damaged or defective product, and the process MSI should follow to report warranty issues.

**1.2 Service Capabilities**

**1.201 CUSTOMER SERVICE/ORDERING**

Vendors shall discuss their ordering/customer service capabilities. This includes having the capacity to receive orders electronically, by phone, facsimile, and by written order. The Contractor shall provide a statewide toll-free phone number for phone orders. The Contractor shall have internal controls to insure that orders are placed by authorized individuals with MSI. The Contractor shall verify orders that have quantities that appear to be abnormal or excessive.

The Contractor shall have an accessible customer service department with an individual specifically assigned to MSI accounts. The Contractor's customer service must respond to MSI inquiries promptly.

Any items to be furnished under the Contract shall be ordered by issuance of purchase orders by MSI.

All purchase orders are subject to the terms and conditions of the Contract. In the event of conflict between a purchase order and the Contract, the Contract shall control.

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

**1.202 TRAINING-RESERVED**

**1.203 REPORTING**

Vendors shall discuss their capabilities related to generating reports. The Contractor shall be able to provide various reports, when requested by MSI. Examples include itemized reports of total items (commodities) purchased by MSI, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

**1.204 SPECIAL PROGRAMS**

The State is interested in any other special programs that vendors may have. Please discuss these programs such as quantity discounts.

### 1.205 SECURITY

The resulting Contract shall require deliveries to State of Michigan correctional facilities. A security background check utilizing the Department of Corrections' Law Enforcement Information Network (LEIN) system is required for all delivery personnel entering correctional facilities. The Contractor will be required to provide to MSI information, including name, date of birth, social security number and/or driver license number, on all delivery people that will service the Contract.

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

## 1.3 Delivery Capabilities

### 1.301 TIME FRAMES

It is requested that the initial order be delivered within forty-five (45) calendar days after receipt of order. All subsequent orders shall be delivered within thirty (30) calendar days after receipt of order, unless other delivery schedules have been established between the Contractor and MSI.

**DELIVERY RESTRICTIONS AND REQUIREMENTS**:

Deliveries shall be made Monday through Friday; no deliveries will be accepted on State of Michigan holidays. Delivery hours for MSI Kinross Correctional Facility/Garment Factory are 7:30 a.m. to 2:00 p.m. Goods delivered shall meet factory superintendent's approval. Shipments not meeting the requirements will be returned to the Contractor at no expense to MSI.

There shall be nothing loaded on or in the trucks other than the items being delivered to MSI. MSI reserves the right to require that delivery be made directly to the factory. All vehicles must exit the facility empty due to security issues.

The Contractor should be aware that there is a possibility of a mobilization at any of the Correctional Facilities which prohibits delivery carriers entering the facility at time of arrival. MSI will not be responsible for any additional charges which may arise due to delivery delays caused by a mobilization.

### 1.302 MINIMUM ORDER

It is requested that the minimum order is 2,000 yards or more. If the bidder's minimum order requirement is less than 2,000 yards, that minimum, which will become the minimum order if a Contract is awarded to the bidder, shall be indicated in the bidder's proposal and in the space provided on the Item Listing/Pricing Page at the end of the terms and conditions.

Also indicate in the space provided on the Item Listing/Pricing Page any additional charge (handling fee) to be applicable on orders under 2,000 yards, or under the bidder's minimum order requirement indicated in the bidder's proposal and on the Item Listing/Pricing Page.

### 1.303 PACKAGING

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

### 1.304 PALLETIZING

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

- Manufacturers' standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.

- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.

**1.305 DELIVERY TERM**

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of 2,000 yards or more to MSI, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item Listing/Pricing Page. Other F.O.B. terms will not be accepted and may disqualify a bidder from further consideration.

Freight Charges - Should MSI order below the minimum order requirement of the Contract, the Contractor for shipping products must use one of the following carriers. Orders being shipped from the States of Michigan, Illinois, Indiana, Ohio, or Wisconsin, use Alvan Motor Freight (Tel: 800-632-4172); orders being shipped from ALL other states, use Roadway Express, Inc. (Tel: 800-253-3193).

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

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

**1.306 ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION- RESERVED**

**1.4 Project Price**

**1.401 PROPOSAL PRICING**

Bidders shall provide pricing for the Supplex® fabric with waterproof coating, by using the spaces provided in the Item Listing/Pricing Page and in the spaces provided on the DMB 285 form.

**1.402 QUICK PAYMENT TERMS**

MSI is interested in payment terms that reflect cost savings to MSI based on an accelerated payment process. Bidders shall discuss quick payment terms that they are offering to MSI (i.e. _____% discount off invoice if paid within _____ days). This may be a factor considered in the award decision.

**1.403 PRICE TERM**

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

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. MSI 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). MSI 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 Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the Contract is canceled. 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 MSI requires.

### 1.6 Other Terms and Conditions Needed for the Contract-RESERVED

# Article 2 – General Terms and Conditions

## 2.0 Introduction

### 2.001 GENERAL PURPOSE

The Contract is for Supplex® fabric, with waterproof coating, for MSI Kinross Correctional Facility Garment Factory. 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 MSI is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by MSI on the Purchase Order Contract Release Form.

Bids are due at the time noted on the Invitation To Bid (ITB) Form.

The "ship to" address for MSI is Kinross Correctional Facility Garment Factory, 16807 S. Hugginin St., Kincheloe, MI 49788. However, if the Contractor and MSI agree, additional ship to addresses may be added should the need develop.

### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Michigan State Industries, State of Michigan, Department of Corrections, hereinafter known as MSI.

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

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

All communications covering the Contract must be addressed to the Contract Administrator. The Contract Administrator's name and contact information will be given after award recommendation.

### 2.003 NOTICE

Any notice given to a party under the 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 the Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately May 25, 2008 through May 24, 2011.

**Option.** MSI reserves the right to exercise two (2) one-year options, at the sole option of MSI. 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 MSI to exercise an option year.

**Extension.** At the sole option of MSI, 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 MSI to exercise an extension.

Written notice will be provided to the Contractor within thirty (30) days, provided that MSI 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 MSI to an extension. If MSI 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, the Contractor 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 the Contract; some statutes are reflected in the clauses of the 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 (CWHSAA) 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 MSI 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 MSI 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 the 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 the Contract.

**2.009 MERGER**

The Contract 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 shall be issued directly by MSI through the issuance of a Purchase Order Form referencing the Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor shall reference the purchase order number on all invoices for payment.

**2.1 Bidder/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 MSI, 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 MSI within 30 days.

2. The Contractor shall also notify MSI 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 MSI 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 RELIABILTIY 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**

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

## 2.2 Contract Performance

**2.201 TIME IS OF THE ESSENCE**

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

**2.202 CONTRACT PAYMENT SCHEDULE**

Unless otherwise agreed in writing, correct invoices will be due and payable by MSI, in accordance with the State of Michigan's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., "Payments to Private Enterprises", within forty-five (45) days after receipt.

**2.203 POSSIBLE PROGRESS PAYMENTS-RESERVED**

**2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)-RESERVED**

**2.205 ELECTRONIC PAYMENT AVAILABILITY**

Public Act 533 of 2004 requires that payments under the Contract be processed by electronic funds transfer (EFT). The Contractor is required to register to receive payments by EFT at the Contract & Express website, www.cpexpress.state.mi.us.

**2.206 PERFORMANCE OF WORK BY CONTRACTOR-RESERVED**

## 2.3 Contract Rights and Obligations

### 2.301 INCURRING COSTS

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

### 2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign the Contract, to assign its rights under the 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 MSI. 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 MSI.

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 MSI has given written consent to the delegation.

Contractor must obtain the approval of MSI before using a place of performance that is different from the address that Contractor provided in the bid.

### 2.304 TAXES

Sales Tax: For purchases made directly by MSI, MSI 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: MSI may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under the Contract are used for MSI's exclusive use. Certificates 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.

MSI's Tax Exempt Certification is available for bidder 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 of Michigan, MSI, its divisions, 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 of Michigan, MSI, 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 the Contract.

2. Any claim, demand, action, citation or legal proceeding against the State of Michigan, MSI, 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 of Michigan, MSI, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in the Contract;

4. Any claim, demand, action, citation or legal proceeding against the State of Michigan, MSI, 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 of Michigan, MSI;

5. Any claim, demand, action, citation or legal proceeding against the State of Michigan, MSI, 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 of Michigan, MSI, 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 of Michigan, MSI 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 of Michigan, MSI 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 of Michigan, MSI with appropriate credits to the State of Michigan, MSI against the Contractor's charges and reimburse the State of Michigan, MSI for any losses or costs incurred as a consequence of the State of Michigan, MSI ceasing its use and returning it.

Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless MSI 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 MSI, 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 not withstanding 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 the Contract.

(a) After receipt by MSI of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, MSI shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from MSI relating to any claim, Contractor shall notify MSI 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 MSI receiving Contractor’s Notice of Election, MSI shall be entitled to defend against the claim, at Contractor’s expense, and Contractor will be responsible for any reasonable costs incurred by MSI in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) MSI 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 MSI about the status and progress of the defense; (ii) Contractor shall, at the request of MSI, demonstrate to the reasonable satisfaction of MSI, Contractor’s financial ability to carry out its defense and indemnity obligations under the Contract; (iii) Contractor shall periodically advise MSI about the status and progress of the defense and shall obtain the prior written approval of MSI before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, MSI shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, MSI may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after MSI’s receipt of Contractor’s information requested by MSI pursuant to clause (ii) of this paragraph if MSI determines that Contractor has failed to demonstrate to the reasonable satisfaction of MSI, Contractor’s financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of MSI, 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 MSI 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 MSI as provided above, MSI 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 MSI, upon request of MSI, Contractor shall promptly reimburse MSI for all such reasonable costs and expenses.

**2.306 LIMITATION OF LIABILITY**

Except as set forth herein, neither the Contractor nor MSI 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 the 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 the Contract.

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

**2.307 CONTRACT DISTRIBUTION**

MSI shall retain the sole right of Contract distribution unless other arrangements are authorized by MSI.

**2.308 FORM, FUNCTION, AND UTILITY**

If the goods provided under the Contract do not the meet the form, function, and utility required by MSI, subject to State purchasing policies, MSI may procure the goods from another source.

**2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION**

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to MSI all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or the State of Michigan, 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 MSI pursuant to this transaction.

**2.310 PURCHASING FROM OTHER STATE AGENCIES-RESERVED**

**2.311 TRANSITION ASSISTANCE**

If the Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 30 days after the expiration or cancellation of the Contract, all reasonable transition assistance requested by MSI, to allow for the expired or canceled portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to MSI. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. MSI shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

**2.312 RESERVED**

**2.313 RESERVED**

**2.314 WEBSITE INCORPORATION**

MSI 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 MSI 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 representative of MSI.

## 2.4 Contract Review and Evaluation

### 2.401 CONTRACT COMPLIANCE INSPECTOR

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

### 2.402 PERFORMANCE REVIEWS

MSI may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with MSI. Performance reviews shall include, but not be 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 MSI, 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 MSI, 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 MSI 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 MSI 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

MSI will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any MSI factory, 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 MSI. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless MSI has approved a change.

### 2.502 QUALITY ASSURANCE

MSI 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.

### 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, MSI shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay MSI 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. MSI has the authority to dispose of the goods without further liability to MSI 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 Contractor under this agreement shall be merchantable. All goods provided under the Contract shall be of good quality within the description given by MSI, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by MSI, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

*Warranty of fitness for a particular purpose* – When Contractor has reason to know or knows any particular purpose for which the goods are required, and MSI is relying on the Contractor'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* – Contractor shall, in providing goods to MSI, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which MSI, at the time of contracting, has no knowledge. Goods provided by Contractor, 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 MSI authority to invoke any and all remedies available to it under this agreement.

**2.602 NOTICE AND THE RIGHT TO CURE**

In the event of a curable breach by the Contractor, MSI 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 MSI 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 MSI's functions for more than 14 consecutive days, and MSI determines that performance is not likely to be resumed within a period of time that is satisfactory to MSI in its reasonable discretion, then at MSI's option: (a) MSI may procure the affected services from an alternate source, and MSI shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) MSI 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 MSI to the Contractor as of the date specified by MSI in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from MSI 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

MSI may cancel the 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 MSI, 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, MSI may, having provided written notice of cancellation to the Contractor, cancel the Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

   In the event that the Contract is cancelled for cause, in addition to any legal remedies otherwise available to MSI by law or equity, the Contractor shall be responsible for all costs incurred by MSI in canceling the Contract, including but not limited to, MSI administrative costs, attorneys fees and court costs, and any additional costs MSI may incur to procure the services required by the 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 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 MSI. MSI may cancel the Contract for its convenience, in whole or part, if MSI determines that such a cancellation is in MSI's best interest. Reasons for such cancellation shall be left to the sole discretion of MSI and may include, but not limited to (a) MSI 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 no longer practical or feasible, and (c) unacceptable prices for additional commodities requested by MSI. MSI 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.

3. Non-Appropriation. MSI may cancel the Contract in the event that funds to enable MSI to effect continued payment are not appropriated or otherwise made available. The Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, MSI shall have the right to cancel the 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. MSI 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. MSI may cancel the Contract 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 MSI, reflects upon the Contractor's business integrity.

5. Approvals Rescinded. MSI may terminate the 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 the 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 MSI to facilitate the orderly transfer of such Services to MSI or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to MSI if the termination is for Contractor's default pursuant to Section 2.602; otherwise MSI shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within the 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-RESERVED

### 2.803 MODIFICATION

MSI reserves the right to modify the Contract at any time during the Contract term. Such modification may include changing the locations for delivery of goods, additional locations for delivery of goods, 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 MSI. Changes may be increases or decreases. IN THE EVENT PRICES ARE NOT ACCEPTABLE TO MSI, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

**MSI 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 MSI Purchasing.

## 2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records include 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 the Contract to the Contract Administrator. Data may include accounting records, payroll records, employee time sheets, and other information MSI deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of MSI 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 the Contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

## 2.805 CHANGES

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

(1) In the specifications (including drawings and designs);
(2) In the method or manner of delivery of goods.

(b) 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.

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

## Article 3 – Certifications and Representations

All bidders shall complete this section and submit with their bid or proposal. Failure or refusal to submit any of the information requested in this section may result in the bidder being considered non-responsive and therefore ineligible for award consideration. MSI may also pursue debarment of bidders that fail or refuse to submit any of the requested information.

In addition, if it is determined that a business purposely or willfully submitted false information, the bidder will not be considered for award, MSI will pursue debarment of the bidder, and any resulting Contract that was established will be cancelled.

**3.0 Bidder/Contractor Information**

**3.001 TAXPAYER IDENTIFICATION NUMBER (TIN)**

Bidder Name: _____

( ) TIN: _____

( ) TIN has been applied for

( ) TIN is not required because:

( ) Bidder/Contractor is a nonresident, alien, foreign business that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal agent in the U.S.

( ) Bidder/Contractor is an agency or instrumentality of a foreign government. If checked, which foreign government _____

( ) Bidder/Contractor is an agency or instrumentality of a federal, state, or local government. If checked, which government _____

( ) Other basis: _____

( ) Bidder is not owned or controlled by a common parent as described below. Common Parent means a corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which bidder is a member.

( ) Bidder is owned or controlled by a common parent

( ) Name and TIN of common parent

Name: _____
TIN: _____

**3.002 EXPATRIATED BUSINESS ENTITY**

DEFINITIONS: "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock, as determined by the State of Michigan.

"Tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

Bidder hereby certifies that it IS _____, IS NOT _____ an expatriated business entity located in a tax haven country.

Bidder hereby certifies that it IS _____, IS NOT _____ an affiliate of an expatriated business located in a tax haven country.

**3.003 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER**

Bidder is not required to have a DUNS number. If bidder does have a DUNS number it must be listed below.

DUNS No.: _____
(nine digit number assigned by Dun & Bradstreet)

DUNS+4 No.: _____
(DUNS + a 4-character suffix)

If the bidder does not have a DUNS number and would like to, it should contact Dun & Bradstreet directly to obtain one. Contractor may obtain a DUNS number by calling Dun & Bradstreet at 1-866-705-5711 or via the Internet at www.dnb.com.

**3.004 BIDDER REGISTRATION INTO A CENTRAL DATABASE-RESERVED**

**3.005 ANNUAL CERTIFICATIONS AND REPRESENTATIONS IN CENTRAL DATA BASE**

The bidder has (check the appropriate block):

( ) Submitted to MSI, annual representations and certifications dated _____ (*insert date of signature on submission)*, which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows (*insert changes that affect only this solicitation; if "none," so state)*: _____

( ) Enclosed its annual representations and certifications.

**3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING-RESERVED**

**3.1 Disclosure Issues**

**3.101 CONFIDENTIALITY**

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

*Protection of Confidential Information*

MSI and Contractor will each use at least the same degree of care to prevent the closing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor MSI shall (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party shall limit disclosure of the other party’s Confidential Information to employees and subcontractors who must have access thereto in order to fulfill the purposes of the Contract. Disclosure to, and use by, a subcontractor is permissible where (A) use of a subcontractor is authorized under the Contract,

(B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such subcontractor's scope of responsibility, and (C) Contractor obligates the subcontractor in a written Contract to maintain MSI's Confidential Information in confidence. At MSI's request, any employee of Contractor and of any subcontractor having access or continued access to MSI's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the subcontractor's obligations under this Section and of the employee's obligation to Contractor or subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

*News releases*

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

*Exclusions*

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

*No Implied Rights*

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

*Remedies*

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

*Survival*

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

*Destruction of Confidential Information*

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

_____ (Initial)

### 3.102 FREEDOM OF INFORMATION ACT

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

_____ (Initial)

### 3.103 DISCLOSURE OF LITIGATION-RESERVED

## 3.2 Vendor/Contractor Compliance with Laws

### 3.201 GENERALLY

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

### 3.202 INDEPENDENT PRICE DETERMINATION

1. By submission of a proposal, the bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:

    a. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor; and

    b. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to award directly or indirectly to any other bidder or to any competitor; and

    c. No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

2. Each person signing the proposal certifies that she/he:

    a. Is the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to l. a., b., and c. above; or

    b. Is not the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to l. a., b., and c. above.

3. Should a bidder be awarded a Contract resulting from this ITB, and be found to have failed to abide by the provisions set forth in this section, said entity will be in default of the Contract. Consequences may include cancellation of the Contract (see section 2.701 Cancellation).

### 3.203 BIDDER/CONTRACTOR COMPLIANCE WITH STATE AND FEDERAL LAW AND DEBARMENT

The bidder certifies, to the best of its knowledge that within the past (3) years, the bidder, an officer of the bidder, or an owner of a 25% or greater interest in the bidder:

1) Has _____, Has Not _____ been convicted of a criminal offense incident to the application for or performance of a State Contract or subcontract;

2) Has _____, Has Not _____ been convicted of any offense which negatively reflects on the bidder's business integrity, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, State or Federal antitrust statutes;

3) Has _____, Has Not _____ been convicted of any other offense, violated any other State or Federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the bidder is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon MSI. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on State projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;

4) Has _____, Has Not _____ failed to substantially perform a State Contract or subcontract according to its terms, conditions, and specifications within specified time limits;

5) Has _____, Has Not _____ violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;

6) Has _____, Has Not _____ refused to provide information or documents required by a Contract including, but not limited to information or document necessary for monitoring Contract performance;

7) Has _____, Has Not _____ failed to respond to requests for information regarding bidder performance, or accumulated repeated substantiated complaints regarding performance of a Contract/purchase order; and

8) Has _____, Has Not _____ failed to perform a State Contract or subcontract in a manner consistent with any applicable State or Federal law, rule, regulation, order, or decree.

9) The bidder certifies and represents, to the best of his knowledge that the supplier and/or any of it's principles:

   A. Are _____, Are Not _____ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any State or Federal agency.

   B. Has _____, Has Not _____ not with in a 3-year period preceding this bid, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) purchase.

   C. Are _____, Are Not _____ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, the commission of the any of the offenses enumerated in section 3.1(c) of the Contract.

   D. The bidder Has _____, Has Not _____ within a 3-year period preceding this solicitation had one or more purchases terminated for default any State or Federal agency.

**3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT**

1) Principals for purposes of section 3.203(9) means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity

2) The supplier shall provide immediate written notice to MSI if, at any time before the purchase award, the supplier learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances

3) A certification that any of the items in paragraph 3.203(9)(A) of this provision exists will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the supplier's responsibility. Failure to furnish the certification or provide such information as requested by MSI may render the supplier non-responsive

4) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 3.203(9)(a) of this provision. The knowledge and information of a supplier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.

5) If it is later determined that supplier knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to MSI, MSI may terminate this purchase for default.

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

**3.205 DEBARMENT OF SUB-CONTRACTORS**

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

**3.206 ETHICS: GRATUITIES and INFLUENCE**

**Gratuities**

The right of the Bidder/Contractor to proceed may be terminated by written notice, if MSI's Administrator or Contract Administrator determines that the Bidder/Contractor, its agent, or its representative has offered or gave a gratuity, kickback, money, gift, or any thing of value to an officer, official, or employee of MSI intended, by the gratuity, to obtain a Contract or favorable treatment under a Contract.

Bidder/Contractor Has _____, Has Not _____ given or offered to give a gratuity, kickback, money, gift, or any thing of value to an MSI official, officer, or employee intended to effectuate the awarding of a Contract or favorable treatment under a Contract.

**Influence**

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

**3.3 Bidder/Contractor Workplace Fitness**

**3.301 DRUG-FREE WORK PLACE**

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

A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the bidder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the bidder's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the work place; and

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; and

D. Notifying MSI with in 15 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within 30 days after receiving notice under subdivision (C)(2), imposing the proper sanctions as communicated to the employee through the statement required by subparagraph (A); and

F. Making a good-faith effort to maintain a drug-free work place through the implementation of sub paragraphs (A) through (E) above.

_____ (Initial)

**3.302 WORKPLACE SAFETY-RESERVED**

**3.303 WORKPLACE DISCRIMINATION**

The Contractor represents and warrants that in performing services for MSI pursuant to the 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.

Contractor hereby represents that in performing the 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.

_____ (Initial)

**3.304 LABOR RELATIONS**

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

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

_____ (Initial)

**3.305 RESERVED**

## 3.306 AFFIRMATIVE ACTION

Bidder represents that it Has _____, Has Not _____ developed and has on file an entity wide affirmative action program.

## 3.307 LIABILITY INSURANCE

### A. Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect MSI from claims which may arise out of or result from the Contractor's performance of services under the terms of the 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 MSI, its 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 the Contract.

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

The insurance shall be written for not less than any minimum coverage specified in the 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 the Contract.

See www.michigan.gov/cis

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, MSI 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 MSI, the Contractor must furnish to MSI, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT NUMBER 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 MSI. The notice must include the Contract number affected and be mailed to: Business Administrator, Department of Corrections, Michigan State Industries, 5656 S. Cedar St., Lansing, Michigan 48911. Failure to provide evidence of coverage, may, at MSI's sole option, result in the Contract's termination.

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

☑ 1. Commercial General Liability with the following minimum coverage:

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

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

☑ 2. If a motor vehicle is used to provide services or products under the 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 divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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

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

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

☑ 4. Employers liability insurance with the following minimum limits:

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

☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State of Michigan as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars ($1,000,000.00) with a maximum deductible of fifty thousand dollars ($50,000.00).

☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars ($10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars ($3,000,000.00) each occurrence and three million dollars ($3,000,000.00) annual aggregate.

☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State of Michigan shall be endorsed on the policy as a loss payee as its interests appear.

**B. Subcontractors**

Except where MSI has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its subcontractors under the 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 MSI 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 of Michigan 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 the Contract, under each commercial general liability and commercial automobile liability policy. In the event MSI approves the representation of MSI 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 the 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 the 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 the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without MSI's written consent, at MSI's election (but without any obligation to do so) after MSI has given Contractor at least thirty (30) days written notice, MSI may pay such premium or procure similar insurance coverage from another company or companies; and at MSI's election, MSI 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 MSI.

**3.308 ENVIRONMENTAL AWARENESS-RESERVED**

**3.309 KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS**

(a) '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 pursuant to a Contract the enforcement of which can be accomplished by process or penalties.

(b) *Listed end products*. The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

| Listed End Product | Listed Country of Origin |
|---|---|
| | |
| | |

(c) *Certification*. The State will not make award to a bidder unless the bidder, by checking the appropriate block, certifies to one of the following:

( ) The bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

( ) The bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the bidder certifies that it is not aware of any such use of child labor.

**3.310 FORCED LABOR, CONVICT LABOR, OR INDENTURED SERVITUDE MADE MATERIALS**

Contractor hereby represents and certifies that, to the best of his/her knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, furnished to the state under this agreement, have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

_____ (Initial)

**3.4 Bidder/Contractor Demographics**

**3.401 SMALL BUSINESS REPRESENTATION**

The bidder represents and certifies that it IS _____, IS NOT _____ a small business concern and that all _____, NOT ALL _____ end items to be furnished will be manufactured or produced by a small business concern in the US, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands

Provide the following information:

_____ (Estimate # of employees)

$_____ (Estimate of annual revenue)

**3.402 WOMEN, MINORITY, OR VETERAN-OWNED SMALL BUSINESS REPRESENTATION**

DEFINITIONS:

'Women-owned business', means a small business that is at least 51% owned by a woman or women who are US citizens and who control and operate the business

The bidder represents that it IS _____, IS NOT _____ a women-owned small business.

'Minority-owned business', means a small business that is at least 51% owned by a minority or minorities who are US citizens and who control and operate the business

The bidder represents that it IS _____, IS NOT _____ a minority owned small business.

'Veteran-owned business', means a small business that is at least 51% owned by a veteran or veterans who are U.S. citizens and who control and operate the business

The bidder represents that it IS _____, IS NOT _____ a veteran owned small business.

The Contractor represents and warrants that the company meets the above (when checked) and can provide supportive documentation upon request.

**3.403 OWNERS AND OFFICERS**

Bidder must list all owners or officers that hold a 25% interest or more in the company (use attachment if necessary):

| Name and Title | % of Interest or Ownership |
|---|---|
| | |
| | |
| | |
| | |

**3.404 RESERVED**

**3.5 State Concerns**

**3.501 GENERAL COMPANY DEMOGRAPHICS**

1. Company Name: _____

2. Company Address: _____
_____

3. Principle Place of Business (zip code): _____

4. Organization type

( ) Limited Liability Company
( ) Limited Liability partnership
( ) Corporation
( ) Partnership
( ) Health Care Provider
( ) Hospital or extended care facility
( ) Sole Proprietorship
( ) Other: _____

5. Year of establishment _____

**3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES**

DEFINITION: 'Business owned by persons with disabilities', means a business in which all of the following apply:

1. More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities
2. More than 50% of the net profit or loss is attributable to the business accrues to shareholders who are persons with disabilities
3. More than 50% of the employees of the business are residents of this State of Michigan DMB

The bidder represents that it IS _____, IS NOT _____ a small business owned by persons with disabilities.

Fraudulently representing information about the use of businesses owned by persons with disabilities to procure the Contract is a violation of the Business Opportunity Act For Persons with Disabilities of 1988, PA 112, MCL 450.791 – 450.795. A person who knowingly violated this act is guilty of a felony, punishable by imprisonment up to 2 years in prison, or a fine not less than $5,000. A person found guilty of violating this act shall be barred from obtaining future contracts with the State.

**3.503 COMMUNITY REHABILITATION ORGANIZATION (Formerly Sheltered workshops)**

DEFINITION: 'Community rehabilitation organization', means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, which provides those individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

The bidder represents that it IS _____, IS NOT _____ a community rehabilitation organization.

**3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS**

DEFINITION: To qualify as a Michigan business, bidder must have during the 12 months immediately preceding this bid deadline, or if the business is newly established, for the period the business has been in existence, it has (check all that apply):

( ) Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan pursuant to the Michigan Single Business Tax Act, 1975 PA 228, MCL §§ 208.1 – 208.145; or

( ) Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or

( ) Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury; or

I certify that **I have personal knowledge** of such filing or withholding, that it was more than a nominal filing for the purpose of gaining the status of a Michigan business, and that it indicates a significant business presence in the State, considering the size of the business and the nature of its activities.

I authorize the Michigan Department of Treasury to verify that the business has or has not met the criteria for a Michigan business indicated above and to disclose the verifying information to the procuring agency.

_____
Authorized Agent Name (print or type)

_____
Authorized Agent Signature

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN $25,000.

Bidder shall also indicate one of the following:

☐ Bidder qualifies as a Michigan business (provide zip code: _____)

☐ Bidder does not qualify as a Michigan business (provide name of State: _____)

☐ Principle place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: _____)

**3.505 PLACE OF PERFORMANCE**

Bidder must obtain the approval of the MSI Administrator before using a place of performance that is different from the address that bidder provided in their bid.

(a) The bidder, in the performance of the Contract, INTENDS _____, DOES NOT INTEND _____ to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

| **Place of Performance Full address** | **Owner/Operator of facility to be used** | **Percent (%) of Contract value to be Performed at listed Location** |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

**3.506 FORMER STATE EMPLOYEES**

Bidder certifies that there ARE _____, ARE NOT _____ former State employees involved in the performance of the Contract.

If former State employees are involved in the performance of the Contract, bidder must provide the following information

Bidder hereby represents that the following employees involved in the performance of the Contract are former State employees (use attachment if necessary).

| **Name** | **Department, Division** | **Date of Employment** |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

**3.507 DOMESTIC END PRODUCT**

DEFINITION: 'Domestic end product' means one that is manufactured within the United States and the cost of the domestic components exceeds 50% of the cost of all the components.

The bidder hereby certifies that the product to be provided, **except those listed below**, are a domestic end product, and that components of unknown origin have not been mined, produced, or manufactured outside the United States (use attachment if needed):

| **Excluded End Products** | **Country of Origin** |
|---|---|
| | |
| | |
| | |
| | |

_____ (Initial)

**3.508 USE TAX**

Companies (and their affiliated organizations) that are awarded contracts are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services **delivered into the State of Michigan**. This is required of all companies that are awarded contracts. Those companies that

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

The requirement of remittance could be limited to the bidder only without including affiliate companies. Contractors and their affiliates as defined in the paragraph above must register for and remit sales and use tax on all taxable sales of tangible personal property or services **delivered to the State of Michigan**.

_____ (Initial)

**3.509 TAX EXCLUDED FROM PRICE**

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

_____ (Initial)

**3.510 TAX PAYMENT**

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

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

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

_____ (Initial)

**3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS**

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

**(1) Persons with disabilities**

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

Bidder IS ____, IS NOT _____ purchasing supplies and/or service from a business owned by persons with disabilities in the performance of the Contract.

Bidder has contracted for _____% of supplies and services needed for the performance of the Contract, which equals $_____, from a business owned by persons with disabilities (estimates or approximates are acceptable).

Bidder(s) Name: _____

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

See Paragraph 3.503 for definition.

Bidder IS ____, IS NOT _____ purchasing supplies and/or service from a community rehabilitation organization in the performance of the Contract.

Bidder has contracted for _____% of supplies and services needed for the performance of the Contract, which equals $_____, from a community rehabilitation organization (estimates or approximates are acceptable).

Bidder(s) Name: _____

**3.512 UTILIZATION OF BUSINESS CONCERNS**

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

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

**3.513 RESERVED**

**3.514 RESERVED**

**3.515 PLACE OF SUBCONTRACTING**

Indicate below **ALL** work to be subcontracted under this agreement (use additional attachment if necessary; estimates are acceptable):

| **Description of Work to be sub-contracted** | **Percent (%) of total Contract value to be sub-contracted** | **Sub-Contractor's name and principal place of business (City and State)** |
|---|---|---|
| | | |
| | | |

**3.516 RESERVED**

**3.517 SERVICES NEEDED IN PERFORMANCE**

Bidder hereby certifies that services to be purchased to enable bidder to perform this agreement will be purchased from a business having its principle place of business in the State of Michigan, **<u>except those listed below</u>** (use additional attachment if necessary; estimates are acceptable):

| **Description of Service to be purchased** | **Percent (%) of total Contract value to be purchased** | **Service providers principal place of business (City and State)** |
|---|---|---|
| | | |
| | | |

### 3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP

Bidder hereby certifies that all employees, Contractors, subcontractors, and any other individual involved in the performance of the Contract, **except those listed below**, are citizens of the United States, legal resident aliens, or individuals with valid visa (use additional attachment if necessary; estimates are acceptable):

| Employee Name | Title |
|---|---|
| | |
| | |
| | |
| | |

### 3.6 Changes to Disclosures

If any of the certifications, representations, or disclosures indicated in this document change after awarding of a Contract, the Contractor is required to report those changes immediately to MSI.

### 3.7 State Assertions

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

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

---

**I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE REPRESENTATIONS AND CERTIFICATIONS MADE HEREIN BY THE BIDDER/CONTRACTOR/SUPPLIER ARE ACCURATE AND CURRENT AS OF THE DATE INDICATED BELOW**

_____
**Name of Bidder/Contractor/supplier**

_____
_____
_____
_____
**Address of supplier**

_____
**Telephone and fax No. of supplier**

_____
**Signature of supplier's authorized representative**

_____
**Title of Supplier representative**

_____
Date

# Article 4 – The Bidding Process

## 4.0 Introduction

### 4.001 PRE BID MEETINGS AND QUESTIONS

1. A pre-bid meeting will not be held.

2. Questions concerning the specifications contained herein are to be submitted, in writing, no later than 5:00 p.m. on March 18, 2008 to:

   Ruth Thole
   MSI Purchasing
   Email: tholere@michigan.gov
   Fax 517-373-3910

MSI will not respond to visitation by bidders or their representatives. MSI will not respond to telephone inquiries during the last seven (7) business days prior to due date of bid. All questions are to be put in writing and should be submitted electronically in MS Word or Rich Text Format. Answers to questions will be prepared as an addendum and posted on MSI's website www.michigan.gov/msi-itb. The addendum will be posted approximately March 18, 2008. Bidders must not contact the factory superintendent directly. Failure to comply may result in disqualification of the bid.

### 4.002 PRICE AND NOTATIONS

Prices and notations must be typed or in ink. Prices shall be for new items only unless specified otherwise in the ITB. The person signing the proposal should initial any form of pricing corrections made to the proposal by the bidder prior to submission in **ink**. In the event of un-initialed pricing corrections, the buyer, with management approval, may require an affidavit from the bidder confirming the price correction was made prior to the bid submission.

### 4.003 DOUBLE SIDED ON RECYCLED PAPER

Bidders should use recycled paper for all printed and photocopied documents related to the submission of their bid and fulfillment of any resulting Contract and shall, whenever practicable, use both sides of the paper and ensure that the cover page of each document bears an imprint identifying it as recycled paper.

## 4.1 Proposal Details

### 4.101 GENERALLY

To be considered, each bidder shall submit a COMPLETE proposal in response to this ITB, using the format provided in Section I. No other distribution of proposals is to be made by the bidder. BIDDERS MUST COMPLETE, SIGN, AND RETURN THE COVER SHEET (FORM DMB 285) SENT WITH THIS ITB, WITH THEIR PROPOSAL. The Proposal itself must include a statement as to the period during which the Proposal itself remains valid. This period must be at least 90 (ninety) days from the due date for responses to this ITB.

### 4.102 EFFICIENT PROPOSAL

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the bidder's ability to meet the requirements of the ITB. Fancy bindings, colored displays, promotional material, etc., will receive no evaluation credit. Emphasis should be on completeness and clarity of content.

### 4.103 CHANGES

Changes made to the ITB as the result of responses made to questions or concerns through correspondence will be placed on the MSI website (www.michigan.gov/msi-itb) as an addendum to the ITB.

The posted addendum officially revises and supercedes the original specifications, terms and conditions. Bidders are responsible for monitoring the website for addendums posted during the bid period. MSI will not respond to telephone inquiries or visitation by bidders or their representatives. MSI does not commit to answering questions during the last seven (7) workdays prior to bid due date.

## 4.2 Possible Bond Requirements

### 4.201 BID BOND - RESERVED

### 4.202 PERFORMANCE BOND - RESERVED

### 4.203 PAYMENT BOND - RESERVED

### 4.204 MAINTENANCE BOND – RESERVED

## 4.3 Proposal Format

The following information shall be included in all proposals. These factors will be used in evaluating each response to the ITB. Proposals should be formatted to include each of the following sections, which should be clearly identified with the appropriate headings:

### 4.301 COMPANY INFORMATION/CAPABILITIES

State the full name and address of your organization and, if applicable, the branch office or other subordinate elements that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation; if as a corporation, include the State in which it is incorporated. If applicable, state whether it is licensed or registered to operate in the State of Michigan. Bidders shall demonstrate their ability to handle a Contract of this size and scope. In addition, please indicate the following:

a. How long the company has been in business.
b. Company sales volumes for the last five (5) years.
c. Size and location of facilities that will be involved in servicing the Contract.

### 4.302 PRIOR EXPERIENCE

Indicate the prior experience of your firm which you consider relevant to your ability to successfully manage a Contract for the commodity or service defined by this Invitation to Bid. Include sufficient detail to demonstrate the relevance of such experience. Proposals submitted should include, in this section, descriptions of qualifying experience to include project descriptions, costs, and starting and completion dates of projects successfully completed. Also, include the name, address, and phone number of the responsible official of the client organization who may be contacted.

Bidders shall provide 3 (three) specific references with their proposal.

### 4.303 STAFFING

The Contractor must be able to provide appropriate staff to properly service the Contract.

Bidder shall discuss the key personnel that will be assigned to the Contract; identify the key personnel by name and title; discuss their primary responsibilities; and indicate where these personnel will be physically located during the Contract performance.

Resumes/detailed information of all key personnel shall be submitted.

List all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities. (See paragraph 3.515)

**Sections 4.304, 4.305, 4.306, and 4.307 are evaluated according to the descriptions in Article 1, Statement of Work.**

**4.304 PRODUCT QUALITY (see Article 1)**

1. Specifications
2. Quality Assurance Program
3. Warranty for Products or Services

**4.305 SERVICE CAPABILITIES (see Article 1)**

1. Customer Service/Ordering
2. Reporting
3. Special Programs
4. Security

**4.306 DELIVERY CAPABILITIES (see Article 1)**

1. Time Frames
2. Minimum Order
3. Delivery Term

**4.307 PROJECT PRICE (see Article 1)**

1. Proposal Pricing
2. Quick Payment terms
3. Price Term

**4.309 COMPLETION OF ARTICLE 3 – CERTIFICATIONS AND REPRESENTATIONS**

In order to be considered for award, bidders are to complete Article 3, Certifications and Representations, and return with their proposal.

## 4.4 Submitting Bids and Proposals

**4.401 BID RECEIPT**

**IN ORDER TO BE CONSIDERED FOR AWARD, BIDS (PROPOSALS) MUST BE RECEIVED AND TIME-STAMPED IN MSI PURCHASING NO LATER THAN 2:00 P.M. ON THE DUE DATE SPECIFIED ON PAGE 1 OF THIS INVITATION TO BID (FORM DMB-285).** Bidders are responsible for timely receipt of their bid in MSI Purchasing. **This responsibility rests entirely with the bidder**, notwithstanding delays resulting from postal handling or for any other reasons. Late bids will not be accepted or considered except under the following circumstances: a) bids received on time do not meet specifications, or b) no other bids are received.

*Your proposal should also be submitted in electronic format on a CD Rom. All documents and data must be created using tools that are compatible with the Microsoft Office Suite 97 standard desktop tools, without need for conversion. Your electronic submission must be submitted in the following Font type and size: Times New Roman, 12 point. The electronic format may be saved in a compressed format. Bidders may submit in electronic format along with the number of paper copies being requested. Any items contained in the Proposal that cannot be saved in the aforementioned format should be clearly identified by the bidder as the items that are excluded from the electronic submission.*

**4.402 PROPOSAL SUBMISSION**

Submit one (1) copy of proposal in accordance with the following instructions, which will ensure that the integrity of the bid process is protected:

1. Submit with your proposal the Invitation to Bid (FORM DMB-285). PROPERLY COMPLETE AND SIGN THE FORM AND INSERT IT WITH YOUR PROPOSAL BEFORE SUBMITTAL.

2. Each envelope/container submitted must contain the response to only one ITB. Do not submit responses to more than one ITB in one envelope/container. Also, faxed bids will not be accepted unless specifically requested by MSI Purchasing.

3. BIDDERS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE ENVELOPE: The Invitation To Bid (ITB) Number; The Date Due; and the Bidder Identification Number (FEIN or SEIN, shown on face of ITB). If a delivery service is used which prohibits such markings on their envelope or package, this information must be placed on the outside of an interior envelope or package.

4. The bid may be submitted utilizing one of the methods below:

   a. Bids may be delivered to the receptionist desk of MSI Purchasing.

   b. Purchasing address for proposals submitted by CONTRACT CARRIER, COURIER DELIVERY, or PERSONAL DELIVERY, is:

      State of Michigan
      Department of Corrections
      Michigan State Industries
      Purchasing
      5656 S. Cedar St.
      Lansing, Michigan 48911

   c. Proposals submitted through the US. POSTAL SERVICE should be addressed as follows:

      State of Michigan
      Department of Corrections
      Michigan State Industries
      Purchasing
      Post Office Box #30723
      Lansing, Michigan 48909

## 4.5 Additional Considerations

### 4.501 PAST PERFORMANCE

MSI reserves the right to evaluate the bidder's prior performance with the State, and the prior performance information may be a factor in the award decision.

### 4.502 FINANCIAL STABILITY

In making an award decision, MSI reserves the right to evaluate the financial stability of any bidder. MSI may seek financial information from the bidder and from third parties. If MSI determines in its sole discretion that contracting with a bidder presents an unacceptable risk to MSI, MSI reserves the right to not award a Contract to that bidder.

### 4.503 SAMPLES/MODELS

**Samples must be returned with bids.** Each sample should be one (1) yard. Bids received without samples may be deemed non-responsive and will disqualify the bidder from having their bid evaluated for an award.

### 4.504 CLARIFICATIONS

If it is determined to be in the best interest of MSI and/or if a bidder's proposal is unclear, MSI may request from one or all bidders, a clarification. MSI will document, in writing, clarification being requested and forward to the bidders affected. This process does not allow for changes, rather to simply clarify the proposal submitted

### 4.505 ORAL PRESENTATION

Bidders who submit proposals may be required to make oral presentations of their proposals to MSI. These presentations provide an opportunity for the bidders to clarify the proposals through mutual understanding. MSI will schedule these presentations, if required.

### 4.506 SITE VISIT

MSI may conduct a site visit to tour and inspect the bidder's facilities. MSI will schedule these visits, if required.

## 4.6 Award Process

### 4.601 METHOD OF AWARD/SELECTION CRITERIA

1. MSI Proposal Evaluation. In awarding the Contract, proposals will be evaluated by MSI based on the following factors:

| | | Weight |
|---|---|---|
| 1. | Product Quality (Section 1.1) | 25 |
| 2. | Service Capabilities (Section 1.2) | 15 |
| 3. | Delivery Capabilities (Section 1.3) | 20 |
| 4. | Company Information/Capabilities (Section 4.301) | 10 |
| 5. | Prior Experience (Section 4.302) | 10 |
| 6. | Staffing (Section 4.303) | 10 |
| 7. | Past Performance (Section 4.501) | 5 |
| 8. | Financial Stability (Section 4.502) | 5 |
| | **TOTAL** | **100** |

2. Price Analysis.

   a) Only those proposals receiving a score of 80 points or more of the total maximum possible score will be considered for award.

   b) Prices will only be considered from those bidders meeting the minimum point threshold after completion of the proposal evaluations.

3. Additional Steps. MSI may elect to engage in either of the following steps with bidders that meet the minimum point threshold.

   (a) **Pricing Negotiations** - If it is determined to be in the best interest of MSI, MSI may enter into negotiations with bidders on pricing only. No modification to the technical requirements or specifications will be allowed. If technical requirement or specification changes are required, the BAFO process as described below will be used.

   (b) **Best And Final Offer (BAFO)** - If the selection process described in the ITB does not lead to a viable award recommendation, or significant deficiencies are identified, MSI at its discretion may prepare a Deficiency Report and Clarification Request (DR/CR) for each proposal

determined to be in the competitive range. Bidders will be allowed to respond in writing to the (DR/CR) with a Best and Final Offer (BAFO). The BAFO may include any changes to the original proposal to address the listed deficiencies, including alterations to the original cost proposal to address correction of such deficiencies. The Best and Final Offers must be submitted by the deadline established by MSI.

After reviewing the Best and Final Offers, MSI will re-evaluate the proposals using the original evaluation method. If an alteration to the originally published evaluation criteria is to be made, such changes in the criteria will be published to all bidders as part of the issuance of the DR/CR's.

Bidders will NOT be provided any information about other proposals or prices, or where the bidder stands in relation to others at any time during the evaluation process. Any request for such information will be viewed as a compromise to the stated evaluation process and the requesting bidder may be eliminated from further consideration. Successful requests for proposal information by a bidder, its subcontractor, or an affiliated party before Contract award may also result in disqualification.
Bidders are cautioned to propose their best possible offers at the outset of the process, as there is no guarantee that any bidder will be allowed an opportunity to submit a Best and Final Offer.

3. Award Decision.

(a) Best Value. The award recommendation will be made to the responsive and responsible bidder who offers the best value to MSI. Best value will be determined by the bidder meeting the minimum point threshold and offering the best combination of the factors stated in Section 4.3, Section 4.5, and price, as demonstrated by their proposal.

(b) MSI reserves the right to consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.).

(c) MSI reserves the right to award by item, part or portion of an item, group of items or total proposal, to reject any and all proposals in whole or in part, if, in the MSI's Business Manager's judgment, the best interest of MSI will be so served.

(d) MSI reserves the right to award multiple, optional use contracts. In addition to the other factors listed, offers will be evaluated on the basis of advantages and disadvantages to MSI that may result from making more than one award.

(e) Thereafter, award recommendation will be made to MSI's Business Manager.

## 4.602 RECIPROCAL PREFERENCE

Public Act 237 of 1988 allows Michigan businesses to claim reciprocal preference against out-of-State firms when bidding on solicitations with estimated values of $100,000 or more.

## 4.603 STATE ADMINISTRATIVE BOARD

Bidders are advised that the State Administrative Board prior to final award must approve all contracts/purchase orders in excess of $25,000. The decision of this Board is final.

## 4.604 PROTESTS

If a bidder wishes to initiate a protest of the award recommendation, the bidder must submit a protest in writing by 5:00 p.m. within fourteen (14) calendar days from the date of the 'notice of award' sent or posted by MSI. Contractor must include the ITB number and clearly state the facts believed to constitute error in the award recommendation along with the desired remedy. More information about the Contractor protest process is available at www.michigan.gov/doingbusiness; refer to the Becoming a Business Partner page.

**4.605 ITEM LISTING/PRICING PAGE**

| ITEM # | QNTY | UNIT | NIGP CODE | DESCRIPTION | UNIT COST | TOTAL COST |
|---|---|---|---|---|---|---|
| 001 | 100,000 | YD | 850-24 | **Fabric, Supplex® with waterproof coating Color: Black**<br><br>Per specifications noted below:<br>Fabric: 70 Denier, 2 ply Supplex®, mid dull nylon filling, dyed to a 2A wash fastness rating 3 (minimum).<br><br>Thread Count: 144 x 68.<br>Coating: Breathable Hydrophilic.<br>Weight: 1-1/2 oz.<br>Finish: HT Teflon<br>Cuttable Width: 58”<br>1” of selvage shall be trimmed from each side to allow material to lay flat when cutting.<br>Fabric and coating must be tapeable to allow seams to be water proofed.<br><br>All rolls must be individually wrapped in clear plastic bags with yardage clearly and securely marked on all rolls. A packing slip must be enclosed in envelope attached to outer side of bag for easy access.<br><br>Delivery times: Monday through Friday, 7:30 a.m. to 2:00 p.m., except for State holidays.<br><br>Brand: _____<br>Thread Count:_____<br>Width: _____<br>Weight: _____<br>Finish: _____<br>Cuttable Width:_____<br>Fastness Rating:_____ | $_____ | $_____ |

**BIDDERS: PLEASE NOTE THE FOLLOWING:**

**Minimum Order Quantity:** The specified minimum order F.O.B. Delivered is 2,000 yards of fabric (See Section 1.302). Please specify if your minimum order is less than this amount. If your minimum order is less than 2,000 yards of fabric, this will become the minimum order specified on any resulting Contract.

Minimum Order Quantity: _____

Please specify any handling fee applicable to order below the minimum quantity: $ _____

Review Security, Section 1.205, and Delivery Restrictions and Requirements, Section 1.301, for information pertaining to delivery within State of Michigan correctional facilities.

All items must meet the factory superintendent's approval. Overages/shortages in excess of 5% will not be accepted.

**Samples must be returned with bids.** Each sample should be one (1) yard. Bids received without samples may be deemed non-responsive and will disqualify the bidder from having their bid evaluated for an award.

**Public Act 533 of 2004 requires that payments under the Contract be processed by electronic funds transfer (EFT). The Contractor is required to register to receive payments by EFT at the Contract & Express website, www.cpexpress.state.mi.us.**

Key Person(s) who will be responsible for administering the Contract:

| | |
|---|---|
| Name:_____ | Name:_____ |
| Title:_____ | Title:_____ |
| Tel #:_____ | Tel #:_____ |
| Fax #:_____ | Fax #:_____ |
| E-Mail Address:_____ | E-mail Address:_____ |