Form No. DMB 234A (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Failure to deliver in accordance with Contract terms and conditions and this notice,may be considered in default of Contract

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

June 17, 2009

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B6200341

between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Sun Valley Foods Company** **1401 Dexter** **PO Box 38368** **Detroit, MI 48238** **greg@sunvalleyfoods.com**	TELEPHONE: **Greg Tatarian** **(810) 865-6360** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspectors: Gatha McClellan - MDOC (517) 373-3643 **Spot Buys of Food Commodities – MDOC (Region D & E)**	
CONTRACT PERIOD: From: **June 19, 2006**	To: **June 30, 2010**
TERMS **½% Net 14 Days**	SHIPMENT **7 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **$200.00**	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT THROUGH MIDEAL.

NATURE OF CHANGE (S):

Effective immediately, this Contract is hereby EXTENDED one (1) year to June 30, 2010.

In addition, this Contract is hereby INCREASED by $50,000.00.

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

AUTHORITY/REASON:

Per agency request, vendor acceptance, and State Administrative Board approval on June 16, 2009.

INCREASE: $ 50,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: $183,000.00

Form No. DMB 234A (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Failure to deliver in accordance with Contract terms and conditions and this notice,may be considered in default of Contract

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

February 2, 2009

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B6200341

between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Sun Valley Foods Company** **1401 Dexter** **PO Box 38368** **Detroit, MI 48238** **greg@sunvalleyfoods.com**	TELEPHONE: **Greg Tatarian** **(810) 865-6360** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspectors: Gatha McClellan - MDOC (517) 373-3643 **Spot Buys of Food Commodities – MDOC (Region D & E)**	
CONTRACT PERIOD: From: **June 19, 2006**	To: **June 30, 2009**
TERMS **½% Net 14 Days**	SHIPMENT **7 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **$200.00**	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT THROUGH MIDEAL.

NATURE OF CHANGE (S):

The following definition of an exceptional spot buy is hreby added to Article 1.001 Defining Document:

An exceptional spot buy is defined as a one time purchase for a product that is available, is below the Contract price, and the Contractor has been contacted and cannot match the price.

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

AUTHORITY/REASON:

Per agency request and DMB, Purchasing Operations approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $133,000.00

Form No. DMB 234A (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Failure to deliver in accordance with Contract terms and conditions and this notice,may be considered in default of Contract

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

April 14, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B6200341

between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Sun Valley Foods Company** **1401 Dexter** **PO Box 38368** **Detroit, MI 48238** **greg@sunvalleyfoods.com**	TELEPHONE: **Greg Tatarian** **(810) 865-6360** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspectors: Gatha McClellan - MDOC (517) 373-3643 **Spot Buys of Food Commodities – MDOC (Region D & E)**	
CONTRACT PERIOD: From: **June 19, 2006**	To: **June 30, 2009**
TERMS **½% Net 14 Days**	SHIPMENT **7 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **$200.00**	

This Contract is Extended to Local Units of Government through MiDeal.

NATURE OF CHANGE (S):

Effective immediately, this Contract is hereby EXTENDED one (1) year to June 30, 2009.

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

AUTHORITY/REASON:

Per Agency request dated February 27, 2008, DMB Purchasing Operations request by letter dated April 1, 2008 and vendor acceptance (Greg Tatarian) by letter dated April 1, 2008.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $133,000.00

Form No. DMB 234A (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Failure to deliver in accordance with Contract terms and conditions and this notice,may be considered in default of Contract

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

June 20, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B6200341

between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Sun Valley Foods Company** **1401 Dexter** **PO Box 38368** **Detroit, MI 48238** **greg@sunvalleyfoods.com**	TELEPHONE: **Greg Tatarian** **(810) 865-6360** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspectors: Gatha McClellan - MDOC (517) 373-3643 **Spot Buys of Food Commodities – MDOC (Region D & E)**	
CONTRACT PERIOD: From: **June 19, 2006**	To: **June 30, 2008**
TERMS **½% Net 14 Days**	SHIPMENT **7 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **$200.00**	

This Contract is Extended to Local Units of Government through MiDeal.

NATURE OF CHANGE (S):

Effective immediately, this Contract is hereby EXTENDED one (1) year to June 30, 2008.

In addition, this Contract is hereby INCREASED by $33,000.00.

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

AUTHORITY/REASON:

Per agency request, vendor acceptance, and State Administrative Board approval on June 19, 2007.

INCREASE: $ 33,000.00
TOTAL REVISED ESTIMATED CONTRACT VALUE: $133,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

July 5, 2006

NOTICE
OF
CONTRACT NO. 071B6200341
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Sun Valley Foods Company** **1401 Dexter** **PO Box 38368** **Detroit, MI 48238** **greg@sunvalleyfoods.com**	TELEPHONE **Greg Tatarian** **(810) 865-6360** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspector: Gatha McClellan (517) 373-3643 **Spot Buys of Food Commodities – MDOC (Region D & E)**	
CONTRACT PERIOD: From: **June 19, 2006**	To: **June 18, 2007**
TERMS **½% Net 14 Days**	SHIPMENT **7 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **$200.00**	
MISCELLANEOUS INFORMATION:	

This Contract is Extended to Local Units of Government through MiDeal.

The terms and conditions of this Contract are those of ITB #071I6200122, this Contract Agreement and the vendor's quote dated March 9, 2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

CONTRACT NO. 071B6200341
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Sun Valley Foods Company** **1401 Dexter** **PO Box 38368** **Detroit, MI 48238** **greg@sunvalleyfoods.com**	TELEPHONE **Greg Tatarian** **(810) 865-6360** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspector: Gatha McClellan (517) 373-3643 **Spot Buys of Food Commodities – MDOC (Region D & E)**	
CONTRACT PERIOD: From: **June 19, 2006**	To: **June 18, 2007**
TERMS **½% Net 14 Days**	SHIPMENT **7 Days ARO**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **$200.00**	

MISCELLANEOUS INFORMATION:
This Contract is Extended to Local Units of Government through MiDeal.

The terms and conditions of this Contract are those of ITB #071I6200122, this Contract Agreement and the vendor's quote dated March 9, 2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $100,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I6200122. Orders for delivery of equipment will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form.

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

FOR THE VENDOR:	**FOR THE STATE:**
SunValley Foods Company Firm Name	Signature
Authorized Agent Signature	**Jeffrey A. White, Buyer Manager** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
ACQUISITION SERVICES

Contract No. 071B6200341

Spot Buys of Food Commodities
Department of Corrections – Region D & E

Buyer Name: Sue Cieciwa
Telephone Number: (517) 373-0301
E-Mail Address: CieciwaS@michigan.gov

Spot Buys of Food Commodities
Department of Corrections

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MDOC Food Delivery Schedule
MDOC Locations
Alternate Regional Approach – Population Count by Facility
Regional Maps
Price Grid – Not Applicable

Article 1 - Statement of Work (SOW)

1.0 INTRODUCTION

1.001 Defining Document

This Contract is for the Michigan Department of Corrections (MDOC), for spot buys of food commodities, throughout the State of Michigan, Region D and E.

This Contract for spot buys of food commodities is intended for use by the Michigan Department of Corrections (MDOC) to be delivered to various Prison Facilities across the State of Michigan. All other state agencies will be authorized to utilize this Contract.

Attached is a listing of MDOC locations and alternate regional approach with population counts by facility that intend to order from the Contract. The listing shall not limit participation of additional agencies/locations as the need may develop at the same prices, terms and conditions.

Exact quantities to be purchased are unknown. The contractor will be required to furnish all such materials as may be ordered during the Contract period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders will be issued directly to the Contractor by various State agencies.

Articles and Sections within this document labeled "Reserved" are held for future contract language or contract language that does not apply to this Contract.

This Contract includes spot buys.

Spot Buys - The Contractor shall have available for purchase by the Michigan Department of Corrections, MDOC, the following kinds of products:

- Prison Pack. Products that are slightly off specification for a manufacturer's primary customer.
- Special Buys. One-time inventory liquidations available due to oversupply, discontinued labels; change of pack or for other reasons which does not affect product quality.

It is expected that MDOC will fulfill most of their facility needs utilizing the commodities included in this contractual agreement. However in the event that an exceptional spot buy presents itself, facilities will be allowed to procure these items.

1.002 Commencement of Work

Contractor shall not proceed with performance of the work to be done under the agreement, including the purchase of necessary materials, until both parties have signed the agreement to show acceptance of its terms.

1.1 REQUIRED INFORMATION

1.101 Company Information

Sun Valley Foods Company
14401 Dexter Avenue
PO Box 38368
Detroit, MI 48238
Telephone: (313) 865-4000
Fax: (313) 865-6364
Contact: Greg Tatarian, Marketing Manager,
Email: greg@sunvalleyfoods.com

1.102 Subcontractors - RESERVED

1.103 FACILITIES/PRODUCTION/WAREHOUSING/DISTRIBUTION

The Contractor shall be able to possess the ability to produce and supply food distributors to ensure no product shortages. Backorders are not acceptable.

The Contractor shall have the warehouse space needed to ensure ample stock levels to ensure no product shortage.

The Contractor shall have the fleet or identified subcontracted carrier needed to ensure product is delivered on time as per the contractual requirements.

1.2 PRODUCT QUALITY

1.201 Specifications

All items to be furnished hereunder shall conform to the specifications as noted in the pricing grid. Detailed Specifications have been indicated for all products to be furnished under this Contract.

There will be zero tolerance for mold contamination. There should be no mold on food product except what is part of its nature. In the event of mold contamination discovered during inspection by the State's ordering agency, the agency will reject the entire shipment of subject food product. Furthermore, in the event of mold contamination discovered while the food product is properly stored and handled at the State's ordering agency, in an unused condition, within the Contractor's guaranteed shelf life, the agency will reject the entire shipment of subject food product. The Contractor must pick up the rejected product within 48 hours of being notified of the rejection by the agency, at no additional charge to the State. Defective items must be exchanged or credited by the Contractor at the option of the agency.

If any items requested on contract are produced and/or grown outside the United States, the contractor shall indicate the respective product is imported. Furthermore, if changes occur during the Contract period which may require the Contractor to supply imported product rather than product produced and/or grown in the United States, approval must be granted by Acquisition Services prior to shipping. Should the State discover the Contractor has been supplying State agencies with product from outside the United States without prior approval from Acquisition Services, the Contract may be canceled.

Trucks used for transport of products from the contractor's supplier and trucks used to deliver products to state agencies must be regularly inspected for cleanliness and the ability to maintain State and Federal requirements

All product containers must be identified with the product name, exact net weight, and date of pack.

1.202 Nutritional Information

If requested by MDOC, Contractor shall provide nutritional data for any products within three (3) business days to MDOC at no additional cost. Online access to all nutritional information is preferred.

1.203 Quality Assurance Program

The Contractor shall have a Quality Control program(s) currently in place within their organization.

The Contractor shall have a written Quality Control Program, which ensures that all products are wholesome and that all manufacturers and suppliers to the Contractor have effective Quality Control Programs, have standard operating procedures and use good manufacturing practices. All manufacturers supplying product to the Contractor shall have verifiable HACCP programs in place at their manufacturing facilities. The Contractor shall monitor the quality control program of all suppliers and manufacturers.

All products shall have legible code dates on the box or package. Code dates shall specify date product was created and a shelf life expiration date.

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

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

1.204 Hazard Analysis Critical Point (HACCP) Program

The Contractor's Production Plant(s) and Distribution Centers shall have a fully implemented HACCP Program(s). In addition, if the Contractor is not the manufacturer, their supplier(s) shall all have current HACCP Program(s) as it relates to this Contract.

The Contractor shall have a USDA certified laboratory or access for testing chemical residues.

1.205 Recall Program

The Contractor shall have the ability to track all products delivered (barcode/UPC's) to the distributor.

The Contractor shall have a product recall program that provides for immediate notification to all customers, including all MDOC facilities, which have received the recalled products. In all cases of product recall, the Contractor shall notify all MDOC facilities that have received the recalled product. In addition, the Contractor shall notify the buyer of this contractual agreement and the Contract Compliance Inspector. Notification shall not exceed twenty-four (24) hours after the Contractor learns of the recall. The Contractor shall have the ability to track products by lot number to specific customers including all MDOC facilities. The Contractor is responsible for picking up and replacing or issuing credit for all products that are subject to recall at no additional charge to the State.

1.206 Sanitation Inspection/Pest Control

The Contractor shall conform to all applicable Federal, State and local laws regarding sanitation.

1.207 Samples During Contract Term

If requested, the Contractor shall provide sample quantities, at no cost to MDOC, so they can evaluate whether products not currently purchased meet their needs. Sampling may be required during the life of the Contract. The Contractor will be available to assist in sampling if needed. Samples shall be provided to MDOC at no additional cost.

1.3 Service Capabilities

1.301 CUSTOMER SERVICE/ORDERING

The Contractor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Contractor's customer service must respond to State agency inquiries promptly. The Contractor shall provide a statewide toll-free number for customer service calls. Contractor shall have internal controls, approved by Acquisition Services, to insure that authorized individuals with the State place orders. The Contractor shall verify orders requesting quantities that appear to be abnormal or excessive.

The Contractor shall have the capability to receive orders electronically, by telephone, e-mail, facsimile, and by written order.

Any food commodities to be furnished under a State of Michigan contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the schedule.

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

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

The Contractor shall have a process to handle product complaints and returns.

Order Process

The Contractor shall have the capability to respond to agency inquiries within one (1) business day of receipt of contact. A Customer Service Representative(s) shall be assigned specifically to the State of Michigan account. The representative shall be prepared to assist the State agencies in any ordering or invoicing problems.

Phone: (313) 865-4000
Fax: (313) 865-6364
Email: jackie@sunvalleyfoods.com
Contact:s: Greg Tartarian, Marketing Manager
Jackie Lawson, Sales Supervisor
Wanda Jackson, Customer Service Contact

STAFFING

The Contractor must be able to provide appropriate staff to properly service a State of Michigan contract. The Contractor shall have sufficient staffing to provide the levels of product quality, service, delivery and all other requirements outlined in this Contract.

1.302 TRAINING

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

1.303 REPORTING

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

Usage Reporting

The Contractor shall have the capability to report the Contract usage by State agencies and/or local units of government. Such usage shall be reported by item to the buyer in Acquisition Services, Department of Management and Budget upon request.

1.304 SPECIAL PROGRAMS

Rebate Programs

If a manufacturer offers rebates directly to a Correction Facility, the Contractor shall track purchase information for each agency for the items affected and submit this information to the manufacturer as required by the manufacturer.

Product Discounts: The State of Michigan reserves the right to negotiate pricing, discounts and/or rebates directly with the manufacturers for large volume purchases. The Contractor shall pass on to the Department of Corrections all price discounts and reductions, which the State of Michigan is entitled to

receive from the manufacturers. These discounts and reductions shall include, without limitation, nonprofit allowances, free goods, rebates, quarterly and other discounts and special manufacturer deal prices. The State reserves the right to change to other product brands carried by the Contractor if the cost is beneficial to the State.

1.305 SECURITY

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

Upon review of the Contractor's security measures, the State will decide whether to issue State ID badges to the Contractor's delivery personnel or accept the ID badge issued to delivery personnel by the Contractor.

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

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

1.4 Delivery Capabilities

1.401 TIME FRAMES

MDOC operates on a four-week cycle menu.

Orders must be delivered within _7_ calendar days per the attached MDOC Food Delivery Schedule.

No backorders are acceptable under this contract.

1.402 Delivery Locations/Schedule

Deliveries must be to dock or inside the specified location per the attached MDOC Food Delivery Schedule.

Other specific delivery requirements may be made between each agency and the Contractor once a contractual agreement is in place. Deliveries may be required weekly, bi-weekly or on a monthly basis.

For the purposes of this Contract, the State is divided into five regions, per attached Alternate Regional Approach with population counts by facility. Please also refer to attached Regional Maps.

The Department of Corrections (MDOC) is anticipated to be primary user of this Contract(s). MDOC locations are located throughout the State, both within and outside of major metropolitan areas. Although new delivery points may be added or deleted at any time, MDOC's current facility list is attached.

The Contractor will serve Region D and E. The Contractor must be able to deliver to any location within each region. The State reserves the right to add or delete delivery locations over the life of the Contract(s).

The facility listing summarizes the locations of MDOC facilities known to use this Contract(s). The Contractor must accept orders from all state locations, not just those listed above. Other locations may be added in the future, and this information is subject to change as MDOC's needs change over the life of the Contract(s).

1.403 Minimum Order

The minimum order is $200.00.

1.404 Delivery Term

Prices are quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of $200.00 or more to the State, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item Listing.

Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance when the responsibility shall pass to the agency except to latent defects, fraud, and the contractor's warranty obligations, if any.

1.405 Packaging

The pack sizes indicated on the Contract represent the sizes currently used by state agencies. The State reserves the right of final approval on packaging offered by the Contractor.

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

The Department of Corrections will NOT accept product packed in glass. Products packed in wire crates with bound nylon strapping or have excessive labeling shall be prohibited. All packaging and packing material must be new and clean, and must not impart objectionable odors or flavors to the product. Printed, stamped and stenciled labeling and marking information on cartons must be water-fast, non-smearing or a contrasting color, clear and readable. Cartons shall be clean and of adequate strength to provide protection and stacking strength. Cartons shall be clearly marked with the product name, count/size and the product code.

1.406 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.

1.407 Stock Levels

Back orders are not acceptable under the Contract. Products listed on this Contract shall be stocked on a regular basis. Any exceptions, such as product substitutions of equal grade to or higher than originally requested at the same cost as the item originally ordered, must be approved by the MDOC Facility Food Service Director prior to shipping.

1.408 Product Availability

The State will not allow any cancellation of products used without an equal and acceptable replacement approved by Acquisition Services during the term of the Contract awarded under this solicitation. Contractors will communicate manufacturer's discontinuation of any products to MDOC Central Office, Contract Compliance Inspector, in writing within five (5) business days. In such instances, Contractors will work with MDOC to identify and implement alternative options. Contractors will be prepared to offer detailed quarterly reports **if requested by the State,** displaying removed SKUs off of contract list and suggested replacements.

1.409 Delivery Temperature

Delivery is to be made in a clean, enclosed, temperature controlled truck and be free from odors. Inside of trucks are to be washed as necessary throughout the calendar year to maintain clean and sanitary conditions.

All products shall be transported maintaining the proper storage temperatures:

- Canned and dry goods should be delivered at temperatures between 33 and 90 degrees F.
- Refrigerated products shall be delivered at temperatures between 34 and 40 degrees F.
- Frozen products shall be delivered at the temperature of 0 degrees or less F.

MDOC will inspect products to verify delivery temperatures and may reject all or a portion of deliveries not meeting these specifications.

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

1.410 Defective Product

Inspection of Products

Product will be inspected by the ordering agency within 48 hours of delivery excluding State holidays and weekends. All products must be in a wholesome and sanitary condition when delivered. Products will not be accepted if the products fail to meet specifications either in product quality or packaging or the product is an unauthorized substitute product. The Contractor must pick up the rejected product within 48 hours of being notified of the rejection by the agency at no additional charge to the State. Defective items must be exchanged or credited by the Contractor at the option of the agency.

The State of Michigan reserves the right to hold rejected products suspected of being adulterated for inspection by the United States Department of Agriculture and/or the Michigan Department of Agriculture.

1.411 Returns - Due to User Error

Contractor must provide for return of unopened cases/whole units (excludes perishable items) ordered in error by the facility and Contractor is notified within 30 days.

1.5 PAYMENT & INVOICING

1.501 Invoice Requirements

All invoices shall reflect the prices and discounts established for the items on this contract for all orders placed by MDOC. Before payment is made, MDOC will verify that all invoiced charges are correct as per the Contract(s). Only properly submitted invoices will be officially processed for payment. Prompt payment requires that your invoices be clear and complete in conformity with the instructions below. All invoices must be itemized showing:

- Contractor name
- Remit to address
- Purchase Order number
- Date of order
- Item Brand Name and/or manufacturer's name/abbreviation
- Item description
- Manufacturer's product number and/or catalog number and/or stock number
- Prices per the Contract, with detailed backup if required
- Quantity shipped

- Extended prices including applicable discounts
- MDOC facility/Institution name
- MDOC Facility/Institution account number
- Invoice total

1.6 PRICING

1.601 Proposal Pricing

Contractor may provide proposal pricing for spot purchases available to MDOC facilities. The prices for spot purchases shall be the delivered price to each facility. There shall be no additional fees for delivery.

1.602 Price Term - RESERVED

1.603 Quick Payment Terms

The Contractor is offering the following quick payment terms to the State:

1/2% discount off invoice if paid within 14 days

1.604 Additional Discounts Offered to the State

In an effort to ensure the State maximizes its leveraged volume and optimizes its savings volume, Bidders are asked to provide additional incentives to State agencies to encourage consolidation of contracts and establishing a longer term vendor relationship. Vendors will be asked to provide additional discounts to the stated based on the following:

- Multiyear contract discount (applies to entire order amount)
- Annual volume-based discount (issued as a quarterly rebate)
- Electronic ordering (applies to entire order amount)

Article 2 – General Terms And Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for spot buys of food commodities for the Michigan Department of Corrections to be delivered to various Prison Facilities throughout the State of Michigan, Region D & E. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form. The Contract is not exclusive of all items that may be identified by each facility that meets their requirements.

Attached is a listing of State agencies and/or locations that may order from the Contract. The listing shall not limit participation of additional agencies/locations as the need may develop at the same prices, terms and conditions. This Contract is extended to local units of government through MiDeal.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

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

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

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator

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

Department of Management and Budget
Purchasing Operations
Attn: Sue Cieciwa
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
Phone: (517) 373-0301
Email Address: CieciwaS@michigan.gov

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

2.004 CONTRACT TERM

The term of this Contract will be for one (1) year and will commence with the issuance of a Contract. This will be approximately June 19, 2006 through June 18, 2007.

Option. The State reserves the right to exercise four (4) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

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

Written notice will be provided to the Contractor before the contract expires. The preliminary notice does not commit the State to an extension. If the State exercises this option, the extended contract shall be considered to include this option clause.

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
MI OSHA MCL §§ 408.1001 – 408.1094
Freedom of Information Act (FOIA) 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 the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

2.008 HEADINGS

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

Acquisition Services has given the State Departments approval to make payments for commodities and services purchased from this contract through Direct Voucher. For this reason, the Contractor may be asked to reference the Blanket Purchase Order/Contract number rather than a Purchase Order Number when invoicing for payment.

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.

2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;

2. Provide Acquisition Services or designated representative ready access to the records upon request;

3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and

4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

2.104 RESERVED

2.105 RESERVED

2.106 PREVAILING WAGE

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

2.108 COMPETITION IN SUB-CONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

2.109 CALL CENTER DISCLOSURE

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

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

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

2.202 CONTRACT PAYMENT SCHEDULE

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

2.203 POSSIBLE PROGRESS PAYMENTS

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.204 RESERVED

2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is MANDATORY for State contractors. The Contractor is required to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

2.206 RESERVED

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

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

2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

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

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

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

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.

2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;

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

4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;

5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that

any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect 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 this Contract.

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to

the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor' s information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.306 LIMITATION OF LIABILITY

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

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 PURCHASING FROM OTHER STATE AGENCIES

State agencies are exempt from utilizing the resulting Contract if they would instead prefer to purchase similar items from the following State agencies:

- Michigan State Industries (MSI), which provides valuable training opportunities for inmates at State correctional facilities.

- Department of Management and Budget, Print and Graphics Services

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 90 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 RESERVED

2.313 RESERVED

2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

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

Gatha McClellan, Foodservice Program Manager
Michigan Department of Corrections
Grandview Plaza Building, 4th Floor
P. O. Box 30003
Lansing, MI 48909
Telephone: (517) 373-3643 Fax: (517) 373-3882
Email: mcclelgw@michigan.gov

2.402 PERFORMANCE REVIEWS

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

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

2.502 QUALITY ASSURANCE

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

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

2.503 INSPECTION

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. The Contractor must pick up the rejected product within 48 hours of being notified of the rejection by the agency at no additional charge to the State. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.

2.504 GENERAL WARRANTIES (goods)

Warranty of Merchantability – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

Warranty of fitness for a particular purpose – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

Warranty of title – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.505 CONTRACTOR WARRANTIES

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;

2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;

3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;

4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;

5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;

6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;

7. The Contractor has duly authorized the execution, delivery and performance of the Contract;

8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.

9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.

10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.

11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.

13. The Contractor is qualified and registered to transact business in all locations where required.

14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 WORKPLACE DISCRIMINATION

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

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

2.507 LABOR RELATIONS

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

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

2.508 LIABILITY INSURANCE

A. <u>Insurance</u>

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

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

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

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.
The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See www.michigan.gov/cis

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

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

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

(X) 1. Commercial General Liability with the following minimum coverage:

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

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

(X) 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

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

(X) 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.

(X) 4. Employers liability insurance with the following minimum limits:

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

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

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

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

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

B. Subcontractors

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

C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each

commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

2.7 Remedies

2.701 CANCELLATION

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

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

   In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

   In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

   In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.

5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

2.703 LIQUIDATED DAMAGES

A. The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.

2.704 RESERVED

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

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

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

2.805 CHANGES

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

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the State-furnished facilities, equipment, materials, services, or site; or
(4) Directing acceleration in the performance of the work.

(a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:

(1) The date, circumstances, and source of the order; and
(2) That the Contractor regards the order as a change order.

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

FOOD DELIVERY SCHEDULE
MICHIGAN DEPARTMENT OF CORRECTIONS January 2006

Facility	Days of Delivery	Hours of Delivery	Vendor Delivery Location ***	Food delivered to FS Location	Dock Height
Alger	M-F	8:00-3:30	Outside deliveries only		standard
Baraga	M-F	9:00-3:00	Outside deliveries only		48"
Bellamy	M-F	7:30-3:00	Outside deliveries only		48"
Carson City	M-F	7:30-3:00	Outside deliveries only		Adjustable Platform
Kinross Complex; Chippewa Hiawatha Kinross Straits	M-F	7:30-3:30	Currently, both changes are coming for delivery due to custody level.	Bread Ice cream	
Coldwater Complex; Florence Crane Lakeland Camp Branch	M-F	7:00-2:30	Outside deliveries only		
Cooper	M-F	7:00-2:30		Bread Coke Products	Adjustable Platform
Cotton	M-F	8:00-4:00	Both	Coke Products Juice Fresh Eggs Ice Cream Bread Products	2 1/2 ft
Egeler Annex	M-F		Central Region Warehouse		4 feet

*** There are 3 options for delivery
1. Warehouse-outside secure perimeter.
2. Food Serv. Dept.-inside secure perimeter.
3. Food deliveries at both locations

pg.2

Facility	Days of Delivery	Hours of Delivery	Vendor Delivery Location ***	Food delivered to FS Location	Dock Height
Handlon	M-F	7:30-3:00		All Products	42"
Harrison/Parr	M-F	8:00-3:30	Outside deliveries only		standard
Huron Valley Complex; Huron Valley Men's Huron Valley Women's	M-F	7:00-3:00	Both	GFS Bread	48"
Imax	M-F	8:00-3:00	Outside deliveries only		23"
Macomb	M-F	8:00-3:00	Both	Bread Ice Cream	25"
Marquette	M-F	8:30-4:00	Outside deliveries only		standard
Michigan State Industries (MSI)	M-F	7:00-2:00			
Mound Ryan	M-TH	8:00-3:30	Outside deliveries only		48"
Muskegon Complex; Muskegon W. Shoreline Brooks	M-F	8:00-1100 12:00-3:30	Both	Frozen Veg Milk Bread eggs	48"
Newberry	M-F	7:00-3:00	Outside deliveries only		46"

*** There are 3 options for delivery
1. Warehouse-outside secure perimeter.
2. Food Serv. Dept.-inside secure perimeter.
3. Food deliveries at both locations

pg. 3

Facility	Days of Delivery	Hours of Delivery	Vendor Delivery Location ***	Food delivered to FS Location	Dock Height
Oaks	M-F	8:00-3:00	Outside deliveries only		standard
Ojibway	M-F	7:00-3:00	Outside deliveries only		44"-46"
Parnell	M-F	7:00-3:30	Both	Bread Opportunity Buys	3'6"
Pugsley	M-F	7:00-3:30	Both	Bread Refrigerated Items i.e. Cheese	48"
Regional W H Jackson	M-F	7:00-2:30	Outside deliveries only		automatic dock levelers
Riverside	M-F	7:00-3:00		All Deliveries	standard
Saginaw	M-F	8:00-3:00	Outside deliveries only		standard
Scott	M-F	8:00-4:00	Both	Ice Cream Bread Opportunity Buys	standard
Southern MI	M-F	7am-3pm	Central Region Warehouse	Special buys, holiday foods	
St. Louis Complex; St. Louis Corr. Mid Michigan Pine River	M-F	7:30-3:00	Outside deliveries only		Each facility has 48" docks with ramps
Standish	M-F	7:30am-3:30pm	Both	Milk	4 & 5 feet
Thumb	M-F	8:00-3:30	Both	Bakery	44"

*** There are 3 options for delivery
1. Warehouse-outside secure perimeter.
2. Food Serv. Dept.-inside secure perimeter.
3. Food deliveries at both locations

STATE AGENCY LOCATIONS

DEPARTMENT OF CORRECTIONS – LOWER PENINSULA

Bellamy Creek Correctional Facility
1727 W. Bluewater Hwy.
Ionia, MI 48846

Boyer Road Correctional Facility
10274 Boyer Road
Carson City, MI 48811

Brooks, Earnest C. Correctional Facility
2500 S. Sheridan Road
Muskegon Heights, MI 49444

Camp Branch
19 Fourth Street
Coldwater, MI 49036

Camp Brighton
7200 Chambers Rd.
Pinckney, MI 48169

Camp Cassidy Lake
18901 Waterloo Road
Chelsea, MI 48118

Camp Lehman
5135 Hartwick Pines Road
Grayling, MI 49738

Carson City Correctional Facility
10522 Boyer Road
Carson City, MI 48811

Cooper Street Correctional Facility
3100 Cooper Street
Jackson, MI 49201

Cotton, G. Robert Correctional Facility
3500 N. Elm Road
Jackson, MI 49201

Crane, Florence Correctional Facility
38 Fourth St.
Coldwater, MI 49036

Deerfield Correctional Facility
1755 Harwood Road
Ionia, MI 48846

Egeler, Charles Reception & Guidance Ctr.
3855 Cooper Street
Jackson, MI 49201

Handlon Richard A. Corr.Facility
1728 Bluewater Highway
Ionia, MI 48846

Harrison, Gus Correctional Facility
2727 E. Beecher Street
Adrian, MI 49221

Huron Valley Complex – Men
3201 Bemis Road
Ypsilanti, MI 48197

Huron Valley Complex – Women
3511 Bemis Road
Ypsilanti, MI 48917

Ionia Maximum Correctional Facility
1576 W. Bluewater Highway
Ionia, MI 48846

Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

Macomb Correctional Facility
34625 26 Mile Rd.
New Haven, MI 48048

Mid-Michigan Correctional Facility
8201 Croswell Rd.
St. Louis, MI 48880

Mound Correctional Facility
17601 Mound Road
Detroit, MI 48212

DEPARTMENT OF CORRECTIONS – LOWER PENINSULA (continued)

Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, MI 49442

Parnall Correctional Facility
1780 E. Parnall
Jackson, MI 49201-7138

Pine River Correctional Facility
320 N. Hubbard
St. Louis, MI 48880

Riverside Correctional Facility
777 W. Riverside Drive
Ionia, MI 48846

Saginaw Correctional Facility
9625 Pierce Rd.
Freeland, MI 48623

Scott, Robert Correctional Facility
47500 Five Mile Road
Plymouth, MI 48170

Standish Maximum Correctional Facility
4713 West M-61
Standish, MI 48658

West Shoreline Correctional Facility
2500 S. Sheridan Drive
Muskegon Heights, MI 49442

Oaks Correctional Facility
1500 Caberfae Highway
Manistee, MI 49660-9200

Parr Highway Corr. Facility
2727 E. Beecher Street
Adrian, MI 49221

Pugsley Correctional Facility
7401 Walton Road
Kingsley, MI 49649

Ryan Correctional Facility
17600 Ryan Road
Detroit, MI 48212

St. Louis Correctional Facility
8585 N. Croswell Road
St. Louis, MI 48880

Southern Michigan Correctional Facility
4002 Cooper Street
Jackson, MI 49201

Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

Delivery to one drop site:

Michigan State Industries (MSI)
SPSM-South Complex-Dairy-1287
1780 East Parnall Rd.
Jackson, MI 49201

STATE AGENCY LOCATIONS

DEPARTMENT OF CORRECTIONS – UPPER PENINSULA

Alger Maximum Correctional Facility
Industrial Park Drive, P.O. Box 600
Munising, MI 49862

Baraga Maximum Corr. Facility
301 Wadaga Road
Baraga, MI 49908

Camp Cusino
N5398 Percy Road
Shingleton, MI 49884

Camp Kitwen
M-26 South, P.O. Box 7
Painesdale, MI 49955

Camp Manistique
401 N. Maple Street
Manistique, MI 49854

Camp Ottawa
216 Gendron Road
Iron River, MI 49935

Chippewa Correctional Facility
4269 W. M-80
Kincheloe, MI 49784

Hiawatha Correctional Facility
4533 W. Industrial Park Dr.
Kincheloe, MI 49786-0001

Kinross Correctional Facility
16770 S. Watertower Drive
Kincheloe, MI 49788

Marquette Branch Prison
1960 South U.S. 41
Marquette, MI 49855

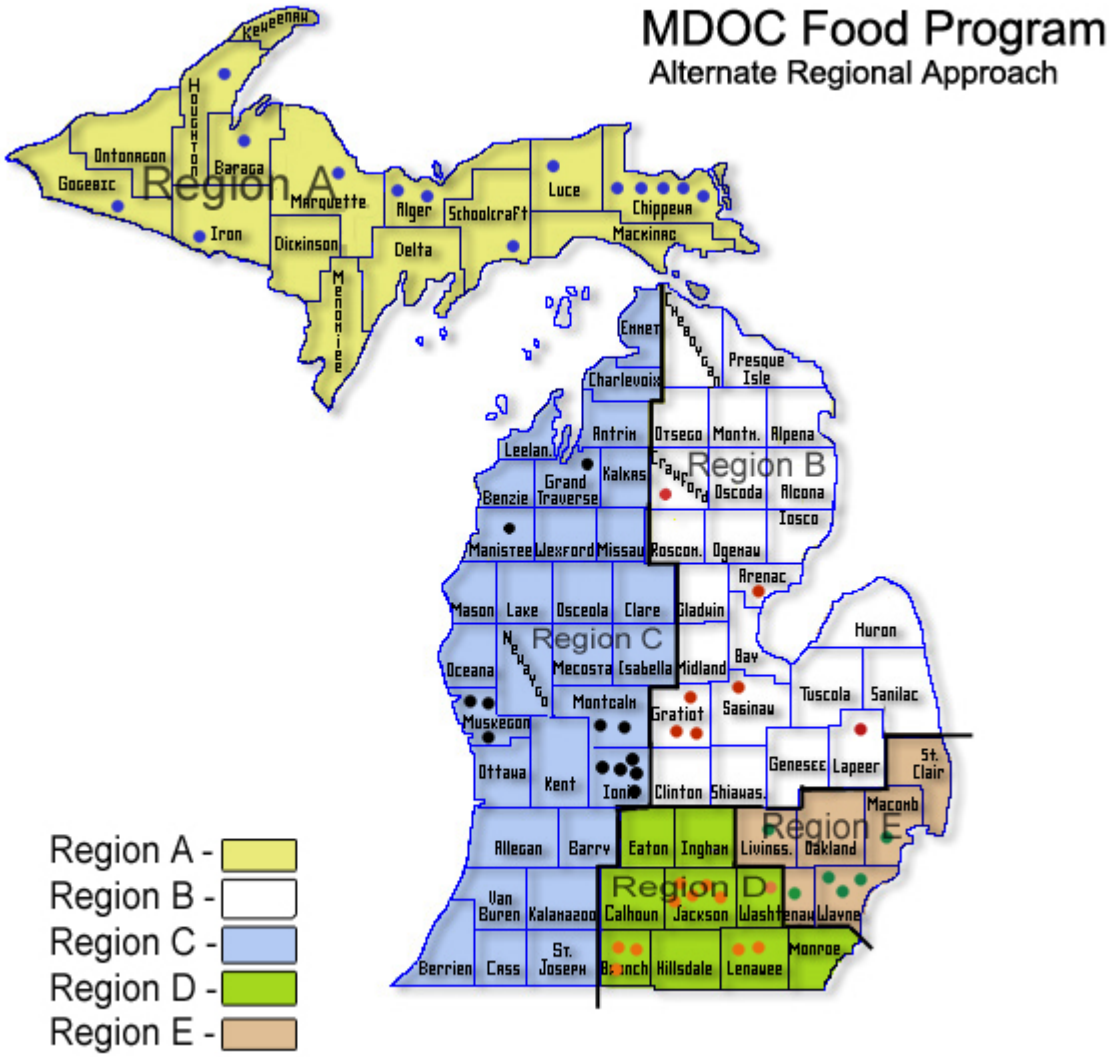
Newberry Correctional Facility
3001 Newberry Ave
Newberry, MI 49868

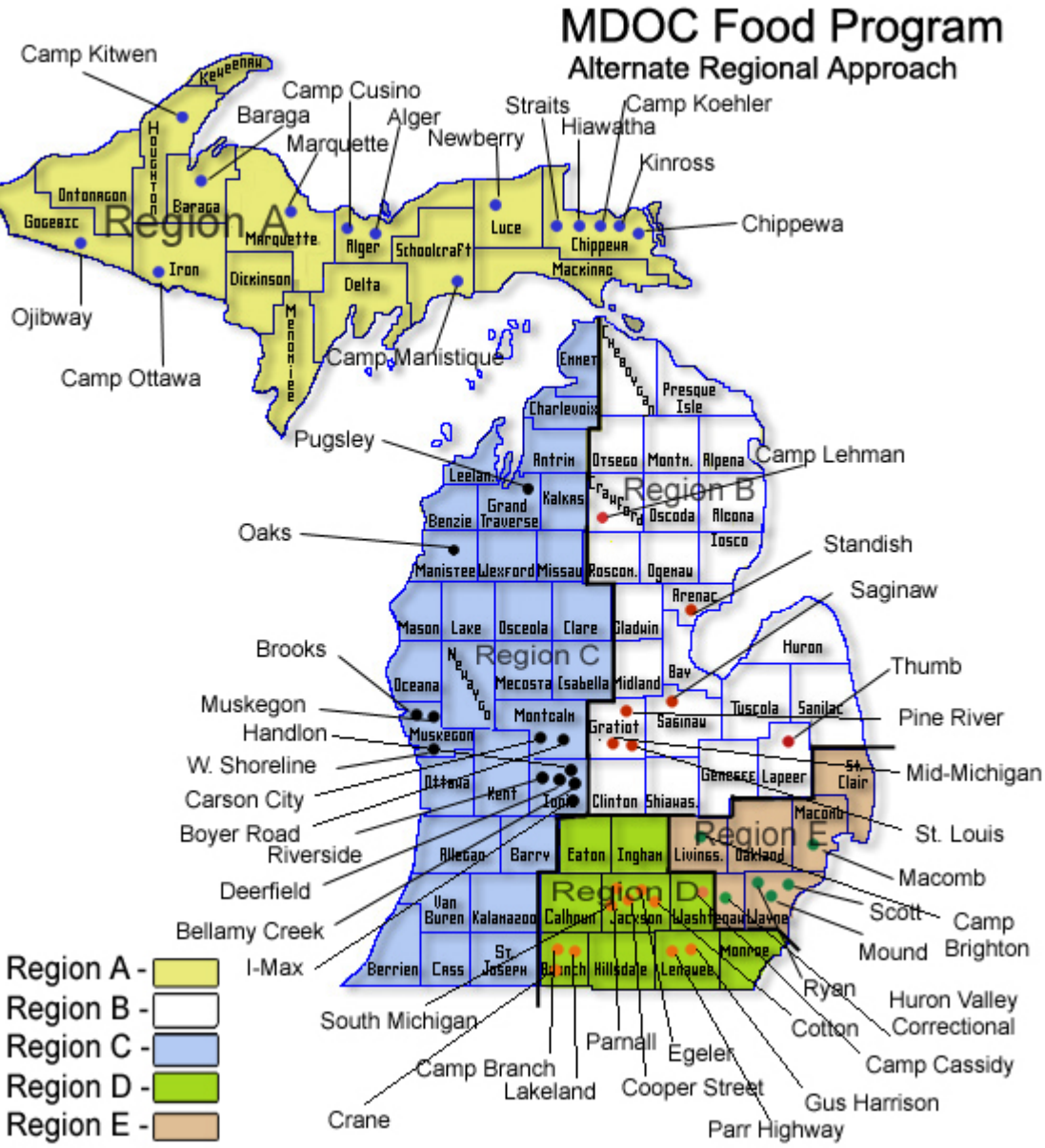
Ojibway Correctional Facility
N 5705 Ojibway Road
Marenisco, MI 49947

Straits Correctional Facility
4387 W. M-80
Kincheloe, MI 49785

MDOC FOOD PROGRAM
ALTERNATE REGIONAL APPROACH
February 3, 2006

REGION A	ESTIMATED FACILITY COUNT	REGION B	ESTIMATED FACILITY COUNT	REGION C	ESTIMATED FACILITY COUNT	REGION D	ESTIMATED FACILITY COUNT	REGION E	ESTIMATED FACILITY COUNT
Alger	536	Camp Lehman	582	Bellamy Creek	1,868	Camp Branch	546	Camp Brighton	404
Baraga	896	Mid-Michigan	1,042	Boyer Road	963	Camp Cassidy Lake	146	Huron Valley Men's	498
Camp Cusino	320	Pine River	1,122	Brooks	1,246	Cooper Street	1,354	Huron Valley Women's	859
Camp Kitwen	288	Saginaw	1,486	Carson City	1,246	Cotton	1,854	Macomb	1,246
Camp Manistique	264	St. Louis	1,243	Deerfield	960	Crane	1,063	Mound	1,070
Camp Ottawa	240	Standish	528	Handlon	1,331	Egeler	1,656	Ryan	1,066
Chippewa	1,150	Thumb	1,216	I-Max	666	Gus Harrison	1,140	Scott	906
Hiawatha	953			Muskegon	1,338	Lakeland	1,328		
Kinross	1,777			Oaks	987	Parnall	1,344		
Marquette	1,089			Pugsley	1,160	Parr Highway	1,042		
Newberry	944			Riverside	1,211	South. Michigan.	1,460		
Ojibway	1,042			W. Shoreline	962				
Straits	962								
13 Facilities		7 Facilities		12 Facilities		11 Facilities		7 Facilities	
Total	***10,461***	***Total***	***7,219***	***Total***	***13,938***	***Total***	***12,969***	***Total***	***6,049***
Percent	***21%***	***Percent***	***14%***	***Percent***	***27%***	***Percent***	***26%***	***Percent***	***12%***
							GRAND TOTAL 50 FACILITIES		***50,636***


MDOC Food Program
Alternate Regional Approach
Region A
Region B
Region C
Region D
Region E
Region A -
Region B -
Region C -
Region D -
Region E -
Keweenaw
Houghton
Ontonagon
Gogebic
Baraga
Marquette
Iron
Dickinson
Menominee
Alger
Schoolcraft
Delta
Luce
Chippewa
Mackinac
Emmet
Cheboygan
Presque Isle
Charlevoix
Antrim
Otsego
Montm.
Alpena
Leelan.
Grand Traverse
Kalkas
Crawford
Oscoda
Alcona
Iosco
Benzie
Manistee
Wexford
Missau
Roscom.
Ogemaw
Arenac
Mason
Lake
Osceola
Clare
Gladwin
Huron
Oceana
Newaygo
Mecosta
Isabella
Midland
Bay
Tuscola
Sanilac
Muskegon
Montcalm
Gratiot
Saginaw
Ottawa
Kent
Ionia
Clinton
Shiawas.
Genesee
Lapeer
St. Clair
Macomb
Allegan
Barry
Eaton
Ingham
Livings.
Oakland
Van Buren
Kalamazoo
Calhoun
Jackson
Washtenaw
Wayne
Berrien
Cass
St. Joseph
Branch
Hillsdale
Lenawee
Monroe


MDOC Food Program
Alternate Regional Approach
Camp Kitwen
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