**ATTACHMENT C**

**AGENCY TERMS**

**SOLICITATION NO. 1310004349**

**1. Indefinite Quantity Contract**

1.1 This contract is an Indefinite Quantity Contract. This contract is for an indefinite quantity and the State may, or may not, buy the quantity mentioned in this contract. Supplier must clear all shipments with agency prior to shipping any portion of this contract.

**2. Applicable Definitions**

2.1 ODOC: Oklahoma Department of Corrections

2.2 Canteen Services: Manufacturing, storage, and delivery of goods by the way of a third-party vendor, to inmates of the Oklahoma Department of Corrections.

2.3 Inmate: any person committed in accordance with the applicable laws of the State and assigned to a Facility for incarceration.

2.4 OBS: Offender Banking System

2.5 Data: recorded information, regardless of form or characteristic

2.6 RFP: Request for Proposal

2.7 Shall: denotes the imperative

2.8 OCI: Oklahoma Correctional Industries

**3. Deliveries to Secure Facilities**

3.1 Suppliers’ employees must comply with the security requirements at each facility. Supplier must comply with all security and identification procedures at each location, at no cost to the ODOC.

3.2 Facility security

A. Contractor employees, agents, and representatives shall comply with all security and identification procedures at DOC facilities. DOC is responsible for alerting Contractor to these requirements prior to the commencement of work. Security requirements may include, but are not limited to:

i. Identification: All employees, agents, and representatives of the Contractor, while working on State property, shall carry or display acceptable identification.

ii.. Vehicle/Tool/Equipment Security: Drivers must turn off vehicle motors and lock cab doors whenever their vehicle is unattended. Tools and equipment must be secured. Vehicles shall be searched prior to entry and exit, causing up to a thirty (30) minute delay each way.

iii. Offender Contact: Contractor employees, agents, and representatives shall minimize interaction with offenders or patients, and shall report any inappropriate contact to DOC facility security staff before leaving the site.

iv. Subject to Search: All persons, vehicles, packages, and equipment entering a DOC facility are subject to search. Persons are typically pat searched and required to clear metal detection devices. Packages, briefcases, purses, etc., will be searched with x-ray equipment. A drug K-9 may also be used to search persons, vehicles, packages, and equipment.

v. Contraband: Contractor employees, agents, and representatives shall not have any weapons including, but not limited to, guns, knives of any type or length, mace, stun-guns, or box cutters, cell phones, pagers, wireless PDAs, drugs, tobacco or tobacco-like products, alcohol (to include near-beer), cash (amount to be determined on a facility-by-facility basis) or any item deemed by facility to be potential contraband. Correctional officers can hold these items for delivery drivers at the delivery sally port and return them as the driver exits the grounds. Any illegal items shall not be returned and shall be reported to local law enforcement. Prescription drugs are allowed only in a one-day supply and must be in the original prescription container; Security staff shall be notified if prescription drugs are brought onto facility grounds.

vi. Security Clearance: Contractor employees, agents, and representatives who enter secure facilities shall have prior approval to enter from facility security staff, generally involving a background check. The Contractor shall submit background check requests a minimum of two weeks prior to arriving at the facility. At facility discretion, Contractor shall comply with any requests to reassign a Contractor employee, agent, or representative, whether the individual has passed the background check if it is determined by facility that there is a security concern.

vii. Tobacco Use Prohibited. The use of tobacco or tobacco-like products is prohibited throughout all indoor and outdoor areas of property owned, leased, loaned or under the control of DOC, including parking lots owned or under the control of ODOC.

3.3 ODOC requires that courier services personnel maintain a courteous attitude and conduct themselves in an appropriate, professional manner.

**4. Prison Rape Elimination Act (28 C.F.R. § 115.17 and § 115.77)**

4.1 Any sexual assault or sexual misconducted or attempted sexual assault or sexual misconduct between the Supplier, its employees, agents or representative and an inmate is expressly forbidden.

4.2 Any sexual assault or sexual misconduct or attempted sexual assault or attempted sexual misconduct between the supplier, its employees, agents, or representatives and an inmate is expressly forbidden.

In addition, by accepting a contract with ODOC, Supplier attests that no employee, agent, or representative of the Supplier who may have direct contact with ODOC inmates while performing the requirements of this contract has:

A. Engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)

B. Been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

C. Been civilly or administratively adjudicated to have engaged in the activity described above. Any supplier who engages in sexual abuse will be prohibited from contact with inmates and will be reported to law enforcement agencies and to relevant licensing bodies.

4.3 Any violation of this provision will be reported to law enforcement agencies and to relevant licensing bodies and will result in the filing of criminal charges as warranted. ODOC may also terminate the contract immediately when violations are found.

**5. Terms and Conditions**

5.1Adding/Deleting Items or Services

A. ODOC may elect to add or delete canteen items identified in the RFP as it deems necessary during the period of the contract. Suppliers shall not make additions to or deletions from the canteen items identified in the RFP without the written consent of ODOC. Supplier shall submit a written request for approval to ODOC before adding or deleting related canteen items in the RFP.

B. ODOC may elect to add locations not listed in Exhibit 1or delete locations listed, at its discretion during the period of this contract, and under the same terms, conditions and prices set forth.

5.2 Basis of Shipment

A. Supplier shall be fully responsible for all costs related to the shipment of canteen items to the warehouse and facility locations, including returned items.

5.3 Returns and Credits

A. All expenses associated with packaging and delivering of unused canteen shall be the responsibility of Supplier, including shipping costs and reverse distribution fees.

B. Supplier shall not assess fees for returned canteen items.

C. If Supplier’s, or its agent’s, error has, in part, led to damage to the canteen item(s) or Specialty Package Program item(s) or to improper storage, or expired packaging, then it shall be treated, for return purposes, as if it is an undamaged, unused item and shall be credited in full.

5.4 Credit(s) shall be issued to the inmate within one (1) business day of staff verifying and reporting to Supplier, for any canteen or Specialty Package order billed to an ODOC correctional facility which was not received by the facility. Supplier shall refund or re-fill and immediately send the order at no additional cost, whichever is the preference stipulated in the contract. If the order was sent to an incorrect facility, whether a ODOC correctional facility, issuance of credit shall not be delayed pending or contingent upon the recipient’s return of the canteen items to Supplier.

5.5 Supplier shall comply with all federal and state laws as expressed in 2.2 of the solicitation. Supplier shall also comply with ODOC policies and regulations applicable for inmate labor and security procedures at the warehouse facility and all ODOC/OCI facilities.

5.6 Supplier shall acknowledge that all computer equipment and electronic devices are subject to search and seizure by ODOC to ensure that use of equipment and devices is in accordance with ODOC policy. Seized equipment will not cause delays in processing or delivery of orders.

5.7 Supplier shall acknowledge that all private and personal property of Supplier, its agents, and employees, and all personal business property, equipment, tools, fixtures, inventory, materials, vehicles, and supplies brought onto ODOC property is subject to search. Neither ODOC, nor the State of Oklahoma, or any agents or employees, thereof, shall be liable for damage or loss to both private or business property of Supplier, its agents, or employees, nor shall ODOC, nor the State of Oklahoma be liable for any damages or losses arising out of any acts, omissions, or other occurrences of inmates, whether employed by Supplier.

5.8 Supplier agrees to offer available employee positions pursuant to the contract to qualifies regular employees of the AGENCY whose state employment is impacted because of the privatization contract and who satisfy the hiring criteria of the supplier.

**6. Post Award Negotiation**

6.1 Following contract award, during the term of the contract, including any optional renewal periods, or prior to renewal of the contract, the State may make changes or revisions within the scope of work of the contract resulting from this solicitation. The State Purchasing Director or designee, the Director of ODOC or designee and Supplier may negotiate in good faith adjustments to terms, conditions, prices or other matters of mutual concern and interest. Such negotiations will be conducted in accordance with the Central Purchasing rules and result in an addendum or modification to the contract resulting from this solicitation.

**7. Reimbursement and Compensation**

* 1. Fee for Service
  2. Supplier will provide the scope of services at no expense to ODOC/OCI and will charge inmates/offenders the negotiated retail amounts.
  3. Future Price Increases will be based on 2.5.12.2 of the solicitation.
  4. Supplier shall submit their recommendation of rate of pay per hour for each hour worked by OCI staff and inmates. ODOC/OCI will submit monthly payroll invoice to awarded supplier, showing hours worked and total pay. It will be the Supplier’s responsibility to verify hours worked at location(s). Pay grades for inmates are established in OP-060107 “Systems of Incarceration” and OCI’s OP-080501 “Oklahoma Correctional Industries Pay Plan”.
  5. Selected supplier shall be responsible for all electricity, water, gas utilities, and the mechanical systems using such utilities, including maintenance thereof for an access fee agreed upon with ODOC/OCI.
  6. Selected supplier shall be responsible to ODOC for a facility fee **if** OCI building in Granite, OK will be used to fulfill the purpose of this service. This facility fee shall be reviewed annually and adjusted for market conditions. Any adjustments must be agreed to by both parties and memorialized by a written agreement.
  7. All operating expense payments shall be made payable to OCI monthly. All payments shall be sent or delivered to the business services coordinator of OCI no later than ten (10) working days after the end of each month.
  8. Selected supplier shall pay 1.5% per month of any outstanding amount accruing the first day payment is overdue, plus cost of collections, including attorney’s fees and cost of all past due amounts.
  9. Canteen System Operations

1. Selected Supplier will offer ODOC/OCI commission on all Canteen and

Specialty Package sales.

* 1. Proposed commission rate shall be submitted in supplier’s proposal for base proposal and all alternates submitted.

1. All canteen commission payments shall be made payable to ODOC

monthly. All payments shall be sent or delivered to the chief financial officer of business services at ODOC no later than ten (10) working days after the end of each month.

* 1. Contractor shall pay 1.5% per month of any outstanding amount accruing the first day payment is overdue, plus cost of collections, including attorney’s fees and cost of all past due amounts.

**8. Performance Bond**

8.1 Supplier shall provide a performance bond in the amount of $5,000,000.00. The bond shall remain in effect until expiration of the contract including all renewal periods. Supplier shall provide the performance bond to the Contracting Officer ten (10) calendar days prior to the contract start date. Supplier shall provide proof of performance bond renewal with each subsequent twelve (12) month contract renewal. The form of the bond shall be the standard form of performance bond such as usually and customarily written and issues by surety companies licensed and authorized to do business in the State of Oklahoma. The bond shall not be pledged against any debt or security for any lien. After securing the performance bond, it shall be the responsibility of Supplier to notify the issuing surety of any change of circumstances. The bond will be used in the event of insolvency or failure by Supplier for any reason, to fulfill its obligations under the contract. After notification of default procedures, collections against the bond are in addition to any other remedies as authorized by law and do not constitute a waiver of any additional remedy.

8.2 All bond submittals shall contain all terms of the bond or applicable to the bond.

8.3 Said bond shall be conditioned upon the faithful performance of the contract.

8.4 This guarantee shall be submitted in the form of good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Oklahoma.

8.5 Payment Indemnification

A. Supplier will be responsible for issuing payments for services performed by Supplier’s employees and will indemnify and hold the State harmless from all claims whatsoever growing out of the lawful demands of employees, Subcontractors, suppliers or any third party incurred in the furtherance of the performance of the Contract.

B. Supplier will furnish, at the State’s request, satisfactory evidence that all obligations of nature herein above designated have been paid, discharged or waived.

8.6 The bond shall be retained by the state to ensure there are no existing judgements, claims, accounts, liens, or other similar type of obligations outstanding and unpaid arising under the resultant contract or from labor or materials having been furnished for or delivered to this project. With presentation by Supplier of the final invoice, Supplier is representing that all persons or entities furnishing labor or materials used in this project, or under said contract, have been paid in full. Upon submission of the final invoice, Supplier shall provide a written statement from the Bonding Company specifically releasing the State of Oklahoma from any responsibility should any unpaid accounts or claims arise against Supplier for labor or material furnished under said contract or delivered and used in said project.

8.7 Supplier and the Surety(-ies), jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the State to pay for the labor, materials and equipment furnished for use in the performance of this contract, which is incorporated herein by reference.

**9. Disclosures Regarding Lobbyists**

9.1 A vendor may not reimburse itself within its state contract pricing for its costs and expenses of lobbyists.

9.2 Any bidder using the services of a lobbyist to assist in obtaining a contract shall (1) disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract, (2) not bill or otherwise charge the State for such and (3) certify that no such costs were billed to the State.

9.3 The name and address of each lobbyist or agent of the Bidder, Supplier, and Subcontractor who communicated with a state employee about a bid or potential bid must be disclosed in proposal response.

**10. Performance Measures and Liquidated Damages**

10.1 Supplier agrees to the importance of this contract and performance standards are agreed to herein. The State and Supplier agrees that in the event of failure to meet the contract requirements, deliverable dates or any standard performance within the time frame set forth in each section, damages may be sustained by the State that it may be impractical and extremely difficult to ascertain and determine the actual damages which the State will sustain by result of such failure. It is therefore agreed that the State, at its sole option may require Supplier to pay liquidated damages for such failures with the following provisions:

A. Where the failure is the sole exclusive fault of the State, no liquidated damages shall be imposed.

B. For any failure by Supplier to meet any performance standard, project task, project, deliverable date, or time frames specified herein, the State may require Supplier to pay liquidated damages of $1,000.00 per business day per affected facility until such task, deliverable or performance standard or timeframe for each business day thereafter until such task, deliverable or performance standard is completed, rectified and accepted by the state. The State will notify Supplier of the first instance of failure to meet one (1) or more defined standards and request a corrective plan by the due date and no extension has been granted, the State may, at its discretion, invoke the appropriate remedy per this schedule.