



EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-08)

Received
OCT 29 2008 AG

Instructions for completing the EDS and the contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

COA Contracts

12/29

RB

1. EDS Number: DD15-9-0009	2. Date prepared: 8/27/2008
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3. CONTRACTS & LEASES

<input type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input type="checkbox"/> Amendment# _____
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input checked="" type="checkbox"/> Other <u>COMMISSARY</u>

FISCAL INFORMATION

4. Account Number: 5150-18060.541600	5. Account Name: COMMISSARY
6. Total amount this action: \$48,000,000.00	7. New contract total: 48,000,000.00
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:	
Year 2009	\$8,500,000.00
Year 2010	\$12,000,000.00
Year 2011	\$12,000,000.00
Year 2012	\$12,000,000.00
Year 2013	\$3,500,000.00

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 10/15/2008	12. To (month, day, year): 10/14/2012
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input checked="" type="checkbox"/> RFP# <u>8-41</u>	<input type="checkbox"/> Other (specify) _____
<input type="checkbox"/> Negotiated	<input type="checkbox"/> Special Procurement

35. Will the attached document involve data processing or telecommunications systems Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):
IC 11-10-6-2

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
The contract is the result of RFP 8-41 for commissary products to be warehoused then sold to inmates in Indiana. The qward of this contract was five areas of purchases; food, health & beauty, electronics, office supplies and miscellaneous

38. Justification of vendor selection and determination of price reasonableness:
The areas of the RFP awarded was based on competitive bids from responders to the RFP. In the areas of food, health & beauty, electronics, office supplies and miscellaneous items this vendor was the low bidder.

RECEIVED

NOV 14 2008

OAG-ADVISORY

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval <i>Jared Astor</i>	41. Date Approved 10/14/08	42. Budget agency approval <i>[Signature]</i>	43. Date Approved 11/12/08
44. Attorney General's Office approval <i>[Signature]</i>	45. Date Approved 11/17/08	46. Agency representative receiving from AG	47. Date Approved

000032165001

32165-001

AGENCY INFORMATION	
14. Name of agency: Prison Enterprises Network	15. Requisition Number: DD15-9-000
16. Address: PEN Products Plainfield Distribution Center 757 MOON RD PLAINFIELD, IN 46168	
AGENCY CONTACT INFORMATION	
17. Name: Mike Jones	18. Telephone #: 317/838-7090
19. E-mail address: mjones2@idoc.in.gov	
COURIER INFORMATION	
20. Name: Mike Jones	21. Telephone #: 317/838-7090
22. E-mail address: mjones2@idoc.in.gov	
VENDOR INFORMATION	
23. Vendor ID # 0000114354	
24. Name: KEEFE SUPPLY CO	25. Telephone #: 800-831-6939
26. Address: P O BOX 17490 ST LOUIS,, MO 63178-7490	
27. E-mail address: sbusch@keefegroup.com	
28. Is the vendor registered with the Secretary of State? (Out of State Corporations must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
29. Primary Vendor: M/WBE	30. If yes, list the %:
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Minority: _____ %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Women: _____ %
31 Sub Vendor: M/WBE	32. If yes, list the %:
Minority: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Minority: <u>1.7</u> %
Women: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Women: <u>1.7</u> %
33. Is there Renewal Language in <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

CONTRACT
EDS# DD15-9-0009

This Contract ("this Contract"), entered into by and between PEN Products a division of the Indiana Department of Correction, 6075 Lakeside Blvd., Indianapolis, IN 46278 (the "State") and Centric Group, L.L.C. dba Keefe Supply Company, 13330 Lakefront Drive, Earth City, MO 63045 (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

The Contractor shall provide goods and services for the commissary operation. The contractor will make available all items in there catalog as shown in exhibit A and will provide all items in the categories of electronics, food, health & beauty, miscellaneous, and office products from the States Essentials List as shown in exhibit B.

The Contractor will follow the following ordering and delivery requirements. All deliveries will be made to the following address:

PEN Products
Plainfield Distribution Center
757 Moon Road
CR 600 East
Plainfield, IN 46168

The State is requiring three (3) day delivery service for all orders. The State requires all pricing to include all shipping and handling fees unless specifically approved by the State. Deliveries are only accepted Monday through Friday from 7:30 AM to 2:30 PM Eastern Time. The State requires that shipments from the Contractor will be in standard skids with a height no greater than fifty-four (54) inches to fit in the racking system being used by the State unless the State agrees to a greater height. The State requires there is no minimum order quantity or dollar requirement for purchase to qualify for prices quoted. The State does not allow backorders. Purchase orders can only be received against once. Partial fill of an item is allowed. The State requires that all delivered product must be palletized and shrink wrapped. All products should be shipped in a manner that will enable the receiving person(s) to easily check the shipment with the invoice. The Contractor is also requested to provide number of cases of similar items if possible. (e.g., if 5 cases of 12 oz. foam cups, then label should indicate case 1 of 5, case 2 of 5 and so on.). The State requires orders received by Contractor by 4:00 PM eastern time must be delivered to the State Commissary warehouse located at the Plainfield Correctional facility within three (3) business days. A packing slip should be included with each shipment, which should include at least the following information in no particular order:

1. Customer/State name
2. Customer/State User address
3. Delivery date
4. Purchase order number
5. Vendor product number per line item
6. Line item description
7. Quantity ordered
8. Quantity included in shipment

Any shipping containers that are not properly marked as per the instructions above could be cause for automatic rejection. The State requires Respondent will maintain a fill rate of ninety-seven and one-half percent (97.5%).

The State has product and packaging requirements which are mandatory. The State requires all products except sodas cannot be in cans or glass jars. Products should be in non-breakable packaging. The State requires that alcohol not be an active ingredient in any product. The State requires all cases (including other UOMs such as packs, bundles, etc.) and individual products must have a bar code. The State requires the Contractor provide only unused products, unless otherwise agreed to by the State. The State requires if shelf life of a product is one hundred (100) days or less, only products with at least seventy-five percent (75%) of shelf life remaining will be accepted.

The Contractor understands the State will follow the following receiving and inspection procedures. The State will inspect and verify deliveries. Products may be matched against the invoice and contract specifications. The delivery ticket should list the same basic information as that of the invoice. The State should have up to seven (7) business days after delivery to identify and reconcile delivery discrepancies (quantity/item description). Product delivered will also be inspected at time of use and is subject to refusal/return for issues of quality. Any product found damaged during the inspection will be rejected and the cost deducted from the vendors invoice. The State reserves the right to reject all or part of a delivery.

The Contractor must comply with all security and identification procedures when making deliveries to the State at the PEN Products, Plainfield Distribution Center or visiting at the same location. Vehicle Security: Drivers must turn off vehicle motors and lock cab doors whenever their truck is unattended. Contractor/Inmate contact: Delivery personnel should minimize interaction with inmates or patients, and must report any verbal contact to authorized officer at PEN before leaving the site. Drivers cannot have any weapons (including jack knives or box cutters), cell phones, pagers, drugs, tobacco products or any item deemed to be potential contraband. Correctional officers can hold these items for drivers at the delivery sally-port and return them as the driver exits the grounds. Any illegal items will not be returned.

The State wants to be able to send purchase orders and receive invoices electronically from the Contractor. Contractor agrees to work with the State to develop the ability to receive purchase orders from the State electronically as well as sending electronically invoices, credits etc. Contractor and State will work together to complete this project at earliest date possible.

The Contractor agrees to work with the State to develop projects where inmates can be used to the benefit of the State and the Contractor.

The Contractor also agrees the contract is not exclusive and the State may purchase goods which are in the Contractors catalog or on the States Essential List if the State finds the identical or a higher quality product at a equal or lower price from another vendor.

2. Consideration.

The Contractor will be paid based on items purchased from there published catalog or the State Essentials List for the categories of electronics, food, health & beauty, miscellaneous, and office products shown in Exhibit B. Prices are on the State Essentials list will be held March 31, 2009 with the exception of Ramen Soup. The Contractor will hold the Ramen Soup price of \$.13 per unit until February 15, 2009. On February 16, 2009 the price for Ramen soup will increase to \$.155 per unit. After the hold period the Contactor will be able to adjust prices with semiannual price reviews. The contractor will have to provide proper documentation showing cost changes to the Contractor. On products not on the State Essentials List will be an agreed upon unit price between the State and the Contractor. In addition the Contractor will provide rebates based on cumulative annual purchases with monthly settlements. The rebates are 4% based on \$6,000,000 in annual purchases or 7% based on 9,000,000 in annual purchases. Total remuneration under this Contract shall not exceed 12,000,000 per year.

3. Term.

This Contract shall be effective for a period of four (4) years. It shall commence on October 15, 2008 and shall remain in effect through October 14, 2012.

4. Access to Records.

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits.

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

7. Authority to Bind Contractor.

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

8. Changes in Work.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

9. Compliance with Laws.

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may

delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
 - (1) The Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment.

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information.

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-

11. If any Social Security number(s) or personal information (as defined in IC 4-1-11-3) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

Attached hereto and incorporated herein by reference as Exhibit ___ is a copy of Contractor's internal privacy/confidential information policy. Contractor agrees to comply with such internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract.

12. Continuity of Services.

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training, and
 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to one hundred eighty (180) days after this Contract expires, and
 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. N/A

- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

13. Debarment and Suspension.

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or

debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

14. Default by State.

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

15. Disputes.

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
 1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
 2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of

Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Employment Option.

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements

that may be in effect. This release will be at no cost to the State or the employee.

18. Force Majeure.

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Governing Laws.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

21. Indemnification.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

22. Independent Contractor.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

23. Information Technology Enterprise Architecture Requirements.

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and

services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

24. Insurance.

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as a additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is not be named as an additional insured on a primary, non-contributory basis.

3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

25. Key Person(s).

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

26. Licensing Standards.

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

27. Merger & Modification.

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, except by written agreement signed by all necessary parties.

28. Minority and Women's Business Enterprises Compliance.

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State. The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or</u>
<u>SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>	

WBE – 609-567-8899 – Mil-Ray Food Company – May 1, 2008 - \$800,000

MBE – 317-558-3700 – Gonzalez Productos Internacionales, Inc – May 1, 2008 - \$800,000

The Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

29. Nondiscrimination.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

30. Notice to Parties.

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

PEN Products
6075 Lakeside Blvd.
Indianapolis, IN 46278

Attn: Controller

B. Notices to the Contractor shall be sent to:

Steve Busch, Group Vice President
Keefe Group
13330 Lakefront Drive
Earth City, MO 63045-1513

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

31. Order of Precedence; Incorporation by Reference.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) RFP# 8-41, (4) Contractor's response to RFP# 8-41, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

32. Ownership of Documents and Materials.

N/A

33. Payments.

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.
- B. If Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

34. Penalties/Interest/Attorney's Fees.

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

35. Progress Reports.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

36. Renewal Option.

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

37. Security and Privacy of Health Information.

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made

available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

38. Severability.

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

39. Substantial Performance.

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

40. Taxes.

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

41. Termination for Convenience.

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least ninety (90) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

42. Termination for Default.

A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree

will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

43. Travel.

No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

44. Waiver of Rights.

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

45. Work Standards.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

46. State Boilerplate Affirmation Clause.

The State swears or affirms that it has not altered, modified or changed the State's Boilerplate contract clauses (as defined in the March 2007 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses: Section 12 – Continuity of Services; Section 32 – Ownership of documents and Materials; Section 41 – Termination for Convenience.

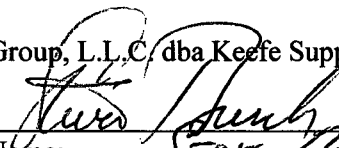
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Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

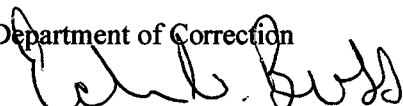
In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

Centric Group, L.L.C. dba Keefe Supply Company (Where Applicable)

By: 
Printed Name: STEVE BUSCH
Title: Gen. Mgr.
Date: Oct 6, 2008

Attested By: _____

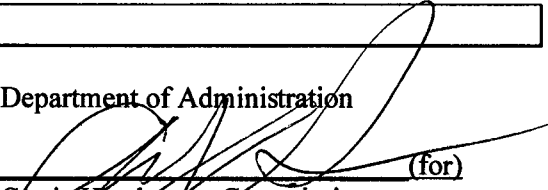
Department of Correction


Edwin G. Buss, Commissioner
Date: 10-16-08

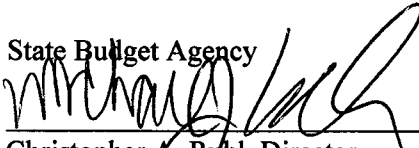
Indiana Office of Technology

By: NA
Printed Name: _____
Title: _____
Date: _____

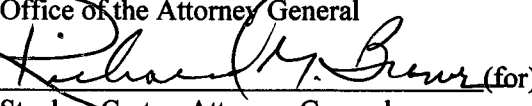
Department of Administration

 (for)
Carrie Henderson, Commissioner
Date: 11/5/08

State Budget Agency

 (for)
Christopher A. Ruhl, Director
Director
Date: 11/2/08 Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

 (for)
Stephen Carter, Attorney General
November 17, 2008