

Superior Court of California
County of Santa Clara

191 North First Street
San Jose, California 95113
(408) 882-2700

AMENDED WALK-THROUGH DATE

Date: April 3, 2009



DAVID YAMASAKI
Chief Executive Officer

SECURITY/FACILITIES/GENERAL SERVICES DIVISION

REQUEST FOR QUOTATION – PRODUCTS /SERVICES
RQ 040309D

NOTICE: ANY ORDER PLACED PURSUANT TO THIS RFQ, IS SUBJECT TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA GENERAL TERMS AND CONDITIONS.

Quote Due Date and Time: April 30, 2009 5 p.m.

Vendor: _____

Address: _____

Sent: April 3, 2009

Contact: Donna Kadra

Phone: 408-882-2808

Fax: 408-882-2890

E-mail: dkadra@scscourt.org

Contact: _____

Phone: _____

Fax: _____

E-mail: _____

THIS IS NOT A CONTRACT

**Description of
Requested
Quotation:**

Purpose of Bid:

Obtain a vendor who currently owns (or will purchase), supply, staff, and sell from two, (1) Self Contained Espresso Vending Carts. Serving coffee, specialty coffee and espresso drinks, non coffee beverages, healthy snacks and light breakfast items; (see exhibit A and B), (1) refrigerated merchandise case and catering service for meetings and special events at the South County Courthouse, Morgan Hill.

**Payment
Terms:**

Net 30 after acceptance by the Court and receipt of accurate invoice.

List three customer references, for whom you have provided similar equipment, products or services.

Company	Address	Contact	Telephone	\$ Total

Scope of Project

Mandatory Walk Through: April 22, 2009 at 10AM

Location: The Morgan Hill Courthouse - 301 Diana Avenue, Morgan Hill, CA 95037

Bid Deadline: April 30, 2009 by 5:00 PM

Bid must be turned in or received before the above specified deadline to: Superior Court of California
Procurement Division
111 W. St. John St., Ste. 100
San Jose, CA 95113

Location of Kiosks or Vending Carts:

Morgan Hill Courthouse
First floor Main lobby of the courthouse
301 Diana Ave
Morgan Hill, CA 95037

Days of Operation:

Monday to Friday; excluding weekends and Court Holidays.
(See exhibit C).

Hours of Operation:

7:30am-3:30pm

Background Check:

Mandatory background check (Live Scan) is required for owners or proprietors and employees of the vendor selected by the Court. The Court will cover the cost for the background check of the initial staff. Subsequent staff will be the responsibility of the vendor.

Traffic Flow:

Average number of court employees and County employees in the building daily (# does not include interns/externs/volunteers)	109
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Average number of attorneys, witnesses, jurors, plaintiffs and defendants in the building on any given day.	450
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Average number of Sheriffs Department staff in the building on any given day	23
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Daily Total 582

Court Responsibility:

- Supply garbage container(s) and plastic bags. Court Janitors to empty garbage and replace bags at the end of the day. Vender is responsible for emptying and disposal of garbage during operating hours.
- To require Sheriff's Department Deputies to open the door at 7:00 to allow entrance into Courthouse for delivery of food items by vendor
- Permission to park close to the building only while unloading the food items in the morning, and while bringing all items out in the afternoon

Power provided on site:

- (1) NEMA L6-30R, 30A, 250V
- (1) Duplex outlet, 110V

Scope of Project

Court Will Not Supply:

- Storage space or prep space for vendor
- No phone jack connection. ATM machine is available at the courthouse for cash.

Advertisement:

Vendor is approved for limited advertisement. All advertisement must be approved by Court. Sample advertisement:

- Advertisement on easel or A-frame in main lobby
- Small 5x7 or 8.5x11 menu hand-outs for jurors

Terms: Length of Agreement:

(1) 2 year agreement with (2) 1-year optional extensions

The Court reserves the right to terminate the contract if agreed contract terms are not met to the Court's satisfaction.

Equipment Requirements:

*Site is equipped with (1) NEMA L6-30R, 30A, 250V and (1) duplex receptacle outlet.

- Vending Carts are moveable with ease.
- Vending Carts are to have a designed to fit cover. Covers are to be used daily when vending cart is not in operation
- Vending Carts to have self contained refrigeration unit
- Vending Carts to have a hand-washing sink with a complete on-board water system for clean and waste water
- Small Microwave is allowed. Toasters or appliances with heating elements are not permitted

Requirements:

- Current permit from the County of Santa Clara Environmental Health Agency
- Current and updated certificate of insurance
- Current Financial Report (Provide in a sealed CONFIDENTIAL envelope - Not for Public Information)
- Food and drinks for human consumption to be prepared following all food preparation guidelines for the State of California
- State of California guidelines for maintaining the temperatures that are set for food and drinks are to be followed
- Glass bottles and aluminum cans of any kinds are not permitted on the premises. No metal utensils of any kind are allowed. Plastic utensils are acceptable.
- Pre made sandwiches or salads in plastic or recycled containers only. Prices charged for items are to be set at a fair market price which is determined by vendor. Sandwich and salad condiments must be in individually wrapped packages or containers

Other Items to be supplied by vendor:

- Napkins
- Paper or Plastic cups (for hot or cold)
- Sugar in pre-packaged individual packages
- Straws
- Stir Sticks
- Plastic utensils

Vendor Responsibility:

- Immediate clean up of all drips, leaks or spills on or around the cart
- Provide own storage container for perishable or non-perishable items. Containers must fit within the allocated space. No additional storage room or prep space will be provided on site at the courthouse. All equipment must be subject to Court approval. Court will not be responsible for repairs or damages to any owner's own equipment
- Perishable items are to be brought in and removed from the building daily
- Vendor will be allowed access to Janitors closet for use to dispose of waste water from Kiosk or Vendor cart and the use of janitorial supplies to clean up major spill

Scope of Project

Submission:

- A copy of the technical plan and specifications of the proposed cart. Include any elevation drawings, detail drawing, color finishes and if possible color rendition of the design and look of the cart
- Substitutions are permitted see Attachment A and B. All substitutions must include detail specifications, elevation drawing with dimensions, and color renditions or color sample finishes to effectively illustrate the look of the espresso cart and merchandise cart.
- A copy of vending cart menu offerings with current pricing including but not limited to various pre-made sandwiches and salads; coffee and espresso offerings along with healthy snacks such as fruit, snack bars, cookies, chips, and light breakfast offerings such as muffins, Danish, bagels, breakfast sandwiches or burritos; include any non coffee or espresso drinks such as soda (assorted brands, regular and diet), Juice(s), other bottled drinks (such as ice tea, water, etc.), and hot beverages such as tea and hot chocolate.
- A copy of the catering menu with current pricing including party tray and individual lunch portions of items such as but not limited to sandwiches, deli wraps, salads, veggie trays, fruits, or assorted fruit cups, bagged chips, and assorted cookies or brownies.

*Please indicate how beverage condiments will be provided to the public

*Due to security risks, glass bottles and aluminum cans are not permitted; Paper or plastic containers are allowed

**Superior Court of California, County of Santa Clara
Supplier Information**

Each bidder responding to the RFQ must follow the rules stated within this section. Adherence to these rules will help to ensure a fair and objective analysis of all proposals. All responses must be on this form or its copy. When insufficient space is available for a response, additional pages may be attached as necessary. Please preserve the original pagination of these forms when preparing your proposal. Failure to comply with or complete any part of this request may result in rejection of a proposal.

1. Company Name:

Local Address:

Headquarters Address:

Representatives, Titles and Telephone:

2. (a) How many years has the company provided services for city, county, and state entities?

(b) How many years has the office that will provide service to the Superior Court of California, County of Santa Clara, been open?

3. What was the company's annual gross revenue during the last year?

\$ _____

Profit as a percent of sales _____%

(Please attach a copy of your financial statements)

4. How many employees does the company have?

Nationwide: _____

Office serving the County of Santa Clara: _____

5. List any subcontractors or co-bidders:

Name

Address

Telephone Number

6. List the names of the personnel that will be assigned if a contract is awarded.

Name	Title	Wage	Project Total
1.			
2.			
3.			
4.			

7. Quotation Period

(a) What is the length of time your proposal is valid?

(b) Who is the authorized negotiator?

Telephone Number:

8. Will the prices set forth in your proposal response be offered to local government or special districts within the Bay Area who may wish to acquire similar products/services?

☐ Yes ☐ No

9. Cash Discount

Cash Discount of less than
30 days will be considered
as net.

State Cash Discount Offered

_____ % _____ days.

COMPLIANCE:

Bidder, have you complied with specifications, terms, Instructions and Conditions of this RFQ?

☐ Yes ☐ No If answer is no, please provide a detailed explanation below.

Firm Name: _____ Phone: _____

Address: _____
STREET CITY STATE ZIP CODE

Authorized Signature: _____ Date: _____

Print Name: _____ Date: _____

Security/Workplace Environment Policy

It is the policy of the Superior Court of California, County of Santa Clara that the working environment be free of racial and sexual harassment and discrimination.

Contractors/Vendors engaged by the Court shall take appropriate measures to ensure and maintain a working environment free of sexual harassment and discrimination based on race, gender, age, color, national origin, religion, disability, political beliefs or sexual orientation. This includes any such discriminatory behavior between the Contractor/Vendor and the Contractor/Vendor's aggregate work force, including any subcontractors working under his/her auspices and Court attaches, Court employees, agents and members of the public at all Court facilities at which the Contractor/Vendor is assigned to work.

Sexual harassment is defined as conduct of a sexual nature, which creates an intimidating, hostile or offensive working environment. This includes, but is not limited to, unwelcome and unwanted sexual advances and requests for sexual favors. Sexual harassment is a form of sex discrimination, is a violation of State and Federal law, and is prohibited.

To ensure a non-discriminatory working environment, the following conduct, when directed at an individual or group's race, gender, age, color, national origin, religion, disability, political beliefs or sexual orientation, is prohibited:

- Verbal harassment, for example, epithets, derogatory comments or slurs;
- Physical harassment, for example, assault, impeding or blocking movement, gesture or any physical interference with normal work or movement;
- Visual forms of harassment, for example, derogatory posters, letters, poems, graffiti, cartoons or drawings.

It is the responsibility of the Contractor/Vendor to:

- Inform their employees and subcontractor that behavior which creates a discriminatory working environment is unacceptable,
- Create a working environment that is free from discriminatory harassment, and take corrective action to stop unacceptable behavior/conduct.

Superior Court of California, County of Santa Clara Background Check/Personnel Security Clearance Procedure

Contractor shall submit to the Court's background check or personnel security clearance investigation if the Court determines that the scope of work and level of Court supervision so warrant, due to confidentiality requirements regarding Court records and information systems. The Court may refuse to enter into, or terminate this Agreement, upon Contractor's failure to "pass" a required background investigation.

- I certify that I am in receipt of the Superior Court Workplace Environment Policy and the Background Check/Security Clearance Procedure.

Contractor/Vendor

Date

A. GENERAL TERMS AND CONDITIONS

1. Accounting.

Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).

2. Audit; Retention of Records

A. **Audit.** Upon reasonable notice, Contractor will provide to Court, to any federal or state entity with monitoring or reviewing authority, or to Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this Agreement, and, as necessary, to determine compliance with relevant federal, state, and local statutes, rules, and regulations. Contractor agrees to provide Court with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records.

B. **Retention of Records.** Contractor will maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with state and federal law. The minimum retention period will be four years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

3. Assignment

Contractor will not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of Court, in the form of an Amendment.

4. Choice of Law; Jurisdiction and Venue

A. **Choice of Law.** This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.

B. **Jurisdiction and Venue.** Contractor irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in San Francisco, California in any legal action concerning or relating to this Agreement.

5. Certifications and Representations

Contractor's signature on the cover page shall also serve as certification for the following paragraphs, A-F.

A. **ADA Compliance.** Contractor certifies that it and its Subcontractors comply with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

B. **FEHA Compliance.** Contractor certifies that it and its Subcontractors comply with all applicable provisions of the Fair Employment and Housing Act, Calif. Gov. Code, § 12990 et seq., and all applicable regulations promulgated under Calif. Code of Regulations, title 2, § 7285 et seq.

Contractor certifies that it and its Subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability, marital status, age (over 40), sex, or sexual orientation. Contractor will ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Contractor certifies that it and its Subcontractors will not unlawfully harass, including sexually harass, any persons with whom Contractor or its Subcontractors interact in the performance of this Work. Contractor

and its Subcontractors will take all reasonable steps to prevent such harassment.

C. **Drug-free Workplace.** Contractor certifies that it and its Subcontractors will provide a drug-free workplace as required by Calif. Gov. Code, § 8355-8357.

D. **Labor/Collective Bargaining.** Contractor certifies that it and its Subcontractors will provide notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements, prior to execution of this Agreement.

E. National Labor Relations Board (NLRB) Certification.

Contractor certifies that, within the immediately preceding two-year period, no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor because of Contractor's failure to comply with an order of the National Labor Relations Board.

F. **Prohibition Against Hiring Court Employees.** Contractor certifies and will require all Subcontractors to certify to the following:

"Former Court employees will not be offered employment positions for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment."

6. Changes in Work; Stop Work

A. Changes in Work.

1. Court reserves the right to require Contractor to make changes in the Work, as set forth in Exhibit A, Statement of Work, which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work.

2. For any change proposed by Court or Contractor, Contractor will submit in writing:

- a) A description of the proposed change and the reasons for the change;
- b) a summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and
- c) a statement of the expected impact on schedule.

3. If Court and Contractor agree on a change, Court will issue an Amendment documenting the change, for the parties' execution.

4. If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Work unless otherwise directed by Court, and any continuing disagreement will follow the process set forth in the provisions entitled "Dispute Resolution." Contractor should not proceed with any change prior to receiving a

written directive or Amendment from Court. All costs for changes performed by Contractor without Court's prior written approval will be at Contractor's sole risk and expense.

B. Stop Work.

1. Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.
2. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to Court during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, Court will either cancel the Stop Work Order or terminate the Work, as provided in Section 21.
3. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume Work. Court may make an equitable adjustment in the delivery schedule, the Contract Amount, or both, if (a) the Stop Work Order increases Contractor's costs or the time required for performance; and (b) Contractor asserts its right to an equitable adjustment within thirty days after the end of the applicable Stop Work period.
4. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, Court may allow reasonable costs resulting from the Stop Work Order.
5. Court will not be liable to Contractor for loss of profits because of any Stop Work Order.

7. Confidential Information

- A. Requirements of Strict Confidence.** While performing Work under this Agreement, Contractor and its Subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to Court, its personnel, court users, or other government entity. Neither Contractor nor its Subcontractors acquires any right or title to the Confidential Information, and Contractor and its Subcontractors agree not to disclose any Confidential Information to any Third Party. All Confidential Information disclosed to Contractor or its Subcontractor will be held in strict confidence and used only in performance of Work under this Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.
- B. Permissible Disclosures.** Contractor may disclose Court's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors and any representatives of Court that are working on the project. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under this Agreement.

8. Conflict of Interest; Prohibition Against Gratuities

A. Conflict of Interest.

1. Contractor covenants that it and its Subcontractors presently have no interest, and will acquire no interest, which would directly or indirectly conflict in any manner or to any degree, with the full and complete performance required under this Agreement. Contractor further agrees to submit full disclosure statements, if required by law to do so, pursuant to the requirements of the California Fair Political Practices Act or any other applicable federal or state law, regulation, or conflict of interest code.
2. Contractor and its Subcontractors and employees will not participate in proceedings that involve the use of Court funds or that are sponsored by Court if the Contractor, its Subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.
3. Contractor and its Subcontractors and employees will not engage in actions resulting in, or creating the appearance of:
 - a) use of an official position with the government for private gain;
 - b) preferential treatment to any particular person associated with this Work or Agreement;
 - c) impairment of Court's independence or impartiality;
 - d) a decision made outside official channels; or
 - e) adverse effects on the confidence of the public in the integrity of Court.

B. Prohibition Against Gratuities.

1. Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of Court, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement.
2. For any breach or violation of this covenant, Court has the right to terminate the Agreement for cause, wither whole or in part. Any loss or damage sustained by Court in procuring, on the open market, replacement goods or services that Contractor agreed to provide, will be borne and paid for by Contractor. Court's rights and remedies under this provision are in addition to any other rights and remedies provided by law or under this Agreement.

9. Consideration

The consideration paid to Contractor is the entire compensation for all Work performed under this Agreement, including all of Contractor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided, as set forth in Exhibit C (Payment Terms/Conditions).

A. **Payment Does Not Imply Acceptance of Work.** Court's payment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to requirements of this Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to Court.

B. **Disallowance.** If Contractor receives payment from Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to Court upon Court's request. At its option, Court may offset the amount disallowed from any payment due to Contractor, under this Agreement or any other agreement.

10. **Contractor Status**

A. **Independent Contractor.**

1. Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent contractors and not as Court agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of Court. Except as expressly provided in Exhibit A (Statement of Work), Contractor has no authority or responsibility to exercise any rights or power vested in Court.
2. This Agreement will not be considered under any circumstance to create a joint-venture relationship.
3. If any governmental entity concludes that Contractor is not an independent contractor, Court may terminate this Agreement immediately upon Notice. Alternatively, Contractor may agree to a reduction in Court's financial liability, so that Court's total costs under this Agreement do not exceed the originally contemplated amount.

B. **Contractor's Employees.**

1. Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.
2. Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.
3. If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.

4. Contractor will indemnify and hold Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between Court and any Contractor or Subcontractor personnel.

C. **Exclusive Control of Means and Method of Performance.** Contractor will determine the method, details, and means of performing or supplying the Work under this Agreement. Contractor will be responsible to Court only for the requirements and results specified in this Agreement and more particularly as set forth in Exhibit A – Statement of Work, and will not be subjected to Court's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

D. **Permits, Laws, and Regulations.**

1. Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Work. During the term of this Agreement, Contractor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work. Such permits and licenses will be made available to Court, upon request.
2. Contractor will promptly provide Notice to Court of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

E. **Subcontracting.**

1. Contractor will not engage a Subcontractor to perform any portion of this Work, without the express written consent of Court. Any subcontracting without Court's written consent is a material breach of this Agreement.
2. Contractor warrants and represents that all Subcontractors will be subject to the same terms and conditions applicable to Contractor under this Agreement. Contractor will incorporate this Agreement as the prime agreement in any subcontracting relationship. Contractor will be liable for all Subcontractor acts or omissions, including indemnity obligations.

F. **Signature Authority.** Contractor has all requisite power and authority to conduct its business, and to execute and perform the Agreement.

11. **Dispute Resolution**

Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

A. **Escalation.**

1. If a dispute remains unresolved following Notice by either party, each party's Chief Executive Officer ("CEO") or designated representative will meet to exchange information and attempt resolution within fifteen days of the effective date of the Notice.

2. If the matter is not resolved as set forth in section 11.A.1, the aggrieved party will submit a second Notice which will:

- a) provide detailed factual information;
- b) identify the specific provisions in this Agreement on which any demand is based;
- c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
- d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.

3. Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen days after receipt of a written request, unless otherwise agreed.

B. Confidentiality During Dispute Resolution.

1. All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.
2. Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by Court. Contractor's failure to diligently proceed in accordance with Court's instructions will be considered a material breach of the Agreement.

12. Force Majeure

- A. Force Majeure events include, but are not limited to:

1. catastrophic acts of nature, or public enemy;
2. civil disorder;
3. fire or other casualty for which a party is not responsible; and
4. quarantine or epidemic.

- B. The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

- C. Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

13. Indemnification

- A. To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend (with

counsel satisfactory to the Court) Court and its agents, officers, and employees from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising or resulting from, or in connection with, the performance or breach of this Agreement by Contractor or its officers, employees, agents, representatives, or Subcontractors. Such indemnification will not include loss, damage, or expense arising from the sole negligence or willful misconduct of Court or its agents, officers, and employees.

- B. For Contractor's acts, errors, or omissions which are covered by Contractor's Professional Liability insurance, Contractor will provide the above indemnification for that proportion of damages, costs, and liabilities that are attributed to Contractor, or any of its Subcontractors, but not for Court's proportionate share of liability.
- C. Contractor's obligation to defend, indemnify, and hold Court and its agents, officers, and employees harmless is not limited to, or restricted by, any requirement in this Agreement that Contractor procure and maintain a policy of insurance.

14. Insurance

- A. **General Insurance Requirements.** Contractor will obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, Court will not be deemed or construed to have assessed the risks applicable to Contractor. Contractor will assess its own risks, and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, for three years from the date of completion of the Work.

B. Minimum Scope & Limits of Coverage.

Contractor will maintain the following coverage:

1. **Workers' Compensation** at statutory requirements of the state of residency.
2. **Employers' Liability** with minimum limits of \$1,000,000.00 for each accident.
3. **Commercial General Liability Insurance** with minimum limits of \$1,000,000.00. for each occurrence, Combined Single Bodily Injury and Property Damage and Personal Injury. If coverage is subject to an aggregate limit, that aggregate limit will be twice the occurrence limit.
4. **Business Automobile Liability Insurance** with minimum limits of \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
5. **Excess coverage**, at the same limits specified for Comprehensive General Liability: Contractual Liability, Independent Contractor, Broadform Property Damage, Personal Injury, Product, and Completed Operation coverage.

- C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to, and approved by, Court. The deductible and/or self-insured retentions will not limit or apply to Contractor's liability to Court and will be the sole responsibility of Contractor.

D. **Endorsements; Additional Insureds.**

The General Liability policy will contain, or be endorsed to contain, the following provisions:

1. Court, its officers, officials, employees and agents will be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Contractor;
2. To the extent of Contractor's negligence, Contractor's insurance coverage will be primary insurance as respects Court, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Court, its officers, officials, employees or agents will not contribute with the insurance, or benefit Contractor in any way;
3. Contractor's insurance will apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability;
4. Contractor will provide Court certificates of insurance satisfactory to Court, evidencing all required coverage before Contractor begins any Work, and complete copies of each policy upon Court's request;
5. If at any time, the foregoing policies become unsatisfactory to Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to Court, Contractor will, upon Notice from Court, promptly obtain a new policy, and submit the same to Court, with the appropriate certificates and endorsements, for approval;
6. All of Contractor's policies will be endorsed to provide Notice to Court of cancellation, non-renewal, and reduction in coverage, within fifteen days, mailed to the Court's representative for Notices named on the Contract Cover Sheet. Such notice will reference the relevant project, and contract number.

- E. **Waiver of subrogation.** Contractor and its insurance carrier waive any and all rights of subrogation against the Judicial Branch Entities. This waiver will be reflected on the Certificate of Insurance, provided by Contractor. If Contractor fails to obtain the appropriate waivers of subrogation, additional insured status, or certificates of insurance from carrier, Contractor will indemnify Court from all costs and liability caused by Contractor's breach.

15. **Limitation of Liability**

Court will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to this Agreement, regardless whether Court was advised of the possibility of such loss or damage. In no event will

Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by Court under this Agreement.

16. **Modification.**

No modification or change to this Agreement will be valid without written approval by Court, in the form of an Amendment, including any changes to Exhibit A (Statement of Work).

17. **Prohibited Bids for End Product of this Agreement**

No person, firm, or subsidiary thereof which has been awarded a consulting services agreement may submit a bid for, or be awarded an agreement for, the provision of services, procurement of Materials or Data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. This provision will not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract under this Agreement in an amount no more than ten percent of the total monetary value of this Agreement.

18. **Public Contract Code References**

References to the Public Contract Code are provided for convenience only. The Public Contract Code does not apply to Court, but is referenced to clarify Contractor's obligations, if specific code sections are cited.

19. **Scope of Work; Acceptance**

- A. **Scope of Work.** Contractor will perform and complete all Work described in Exhibit A – Statement of Work, in compliance with the requirements of this Agreement, and to the satisfaction of Court.
- B. **Acceptance.**

1. All Work provided by Contractor under this Agreement is subject to written acknowledgement and acceptance by Court's Project Manager. The Court's Project Manager will apply the acceptance criteria set forth in Exhibit A – Statement of Work, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work..
2. Project Manager shall use the Acceptance and Sign-off Form (in the form provided as Exhibit B) to notify the Contractor of acceptance or non-acceptance.
3. If the Work is not acceptable, Project Manager shall detail its failure to meet the acceptance criteria. Contractor shall have ten business days from receipt of Acceptance and Sign-Off Form to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this Section 18 until Contractor's receipt of Court's written acceptance of such corrected Work; provided, however, that if Court rejects any Work on at least two (2) occasions, Court may terminate that portion of this Agreement which relates to the rejected Work at no expense to Court.

- C. **Prior Work.** Prior work, performed by Contractor pursuant to Court's authorization, but before

execution of this Agreement, will be considered as having been performed subject to the provisions of this Agreement.

- D. **Non-Exclusivity.** This is a non-exclusive agreement. Court reserves the right to perform, or have others perform the Work of this Agreement. Court reserves the right to bid the Work to others or procure the Work by other means.

20. **Standard of Performance; Warranties**

- A. **Standard of Performance.** Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that Court relies on the accuracy, competence, and completeness of Contractor's services.

B. **Warranties.**

1. Contractor warrants and represents that the Work and all Deliverables furnished will conform to the requirements of this Agreement and such Work and Deliverables will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship, and, to the extent not manufactured pursuant to detailed designs furnished by Court, free from defects in design. Court's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.
2. **Non-Infringement.** Contractor represents and warrants to Court that it is and will be either own, or be authorized to use for its own and the Court's benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work
3. All warranties will inure to Court, its successors, assigns, customer agencies, and users of the Work provided hereunder.
4. Unless otherwise specified, the warranties set forth in this Section 19 commence after Work has been approved and accepted by Court.

C. **Personnel Requirements.**

1. Contractor will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Work. For continuity, Contractor will endeavor to retain the same individuals during the performance of Work.
2. Court reserves the right to disapprove Contractor's personnel, if dissatisfied with their performance. Upon receipt of such Notice, Contractor will immediately assign replacement personnel, with equivalent or greater experience and skills, who are acceptable to the Project Manager.
3. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, Court may terminate this Agreement for cause.

D. **Background Checks.**

For Contractor's employees, Subcontractors, or agents performing work, and with access to Court's systems (on-site or remotely) in the performance of their Work under this Agreement, Court will have the right, but not the obligation, to request or conduct a background check, before granting access to Court's premises or systems or at any other time. Contractor will cooperate with Court in performing any background checks, will provide prompt Notice to Court of (i) any person refusing to undergo such background check, and will immediately remove such person from the project, and (ii) the results of any background check as requested by Court. Contractor will obtain all releases, waivers, or permissions required for the release of such information to Court. Any additional costs will be borne by Contractor.

21. **Survival.**

Terms that will survive termination or expiration of this Agreement include, but are not limited to: Assignment, Audit Rights and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties.

22. **Termination**

- A. **Termination for Cause.** Court may terminate this Agreement, in whole or in part, and be relieved of any payments, if Contractor fails to perform the requirements of this Agreement at the time and in the manner agreed. Court may proceed with the Work in any manner deemed proper. All costs to Court arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

B. **Termination for Convenience.**

1. Court may terminate this Agreement, in whole or in part, at any time and for any reason, upon at least ten days Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.
2. If Court terminates all or part of this Agreement other than for cause, the Court will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.

C. **Termination due to Fund Appropriation and Availability.**

1. Court's obligations under this Agreement are subject to the availability of funds authorized for this Work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement.
2. Upon Notice, Court may terminate this Agreement in whole or in part, without prejudice to any right or remedy of Court, for lack of appropriation of funds. Upon termination, Court will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.

D. **Effect of Termination.**

1. Upon any expiration or termination, Court will have the right to take possession of any materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to Court all of Contractor's right, title, and interest in and to such Work and related materials and work product, and any and all intellectual property rights.
 2. Upon termination of any kind, Court may withhold from payment any sum that Court determines to be owed to Court by Contractor, or necessary to protect Court against loss due to outstanding liens or claims of former lien holders.
23. **Time is of the Essence.** Time of performance is of the essence in the performance of services by Contractor under this Agreement.
24. **Waiver; Severability**
- A. **Waiver of Rights.** Court's action, inaction, or failure to enforce any right or provision of this Agreement is not a waiver of its rights, and will not prevent Court from enforcing such rights on any future occasion.
 - B. **Severability.** The provisions of this Agreement will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this Agreement are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement will not affect the validity of the remainder of this Agreement.
25. **Entire Agreement**
- A. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and will not be used to interpret or determine the validity of this Agreement.
 - B. This Agreement was negotiated between the parties, and neither party "prepared" this Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.
 - C. This Agreement constitutes the entire and final understanding of the parties regarding this matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the this matter.

End of General Terms and Condition

EXHIBIT A

Comparable substitutions are allowed.
Please provide specifications.

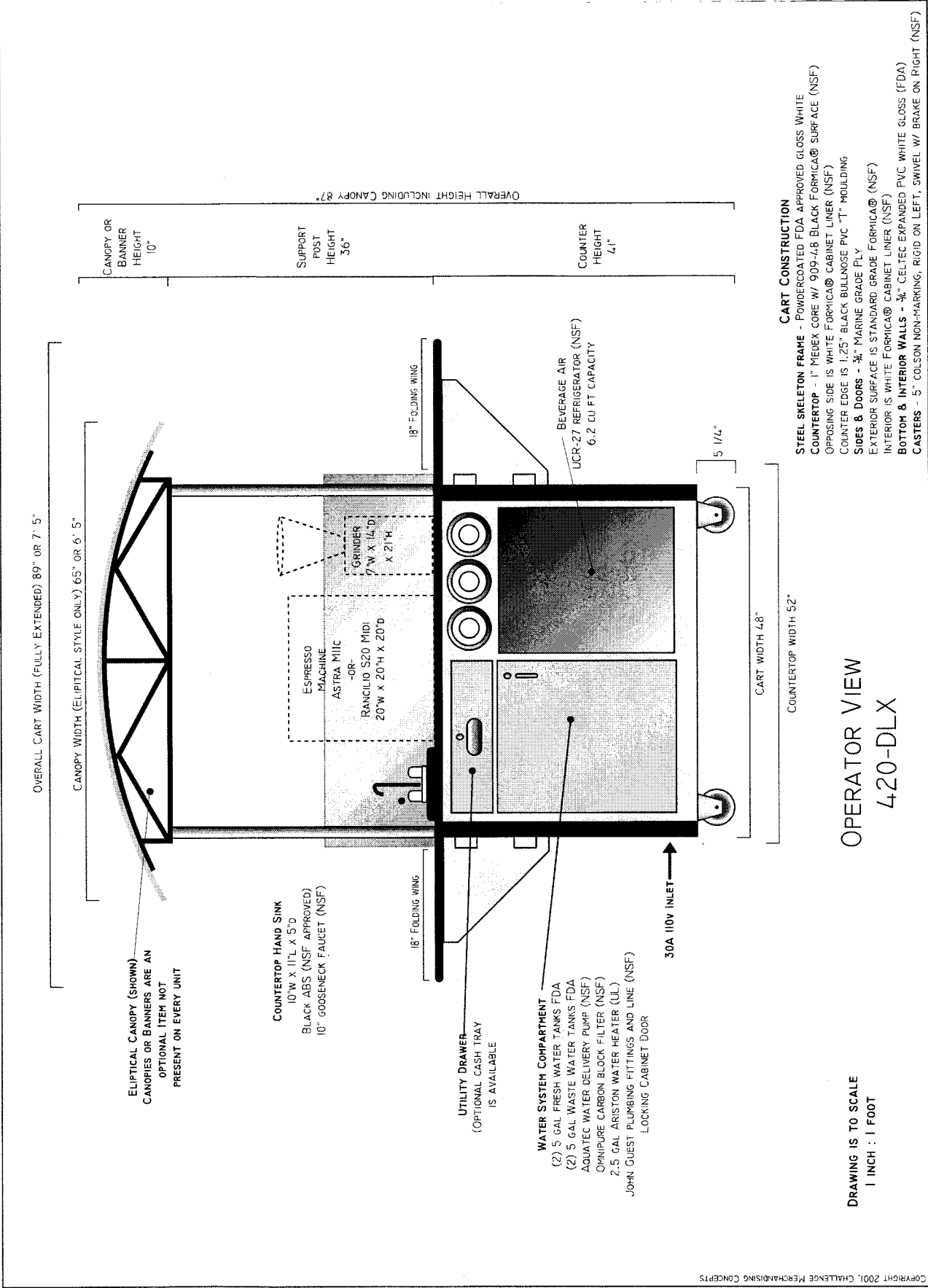


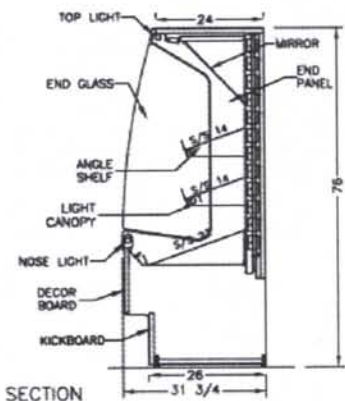
EXHIBIT B

Comparable substitutions are allowed.
Please provide specifications.



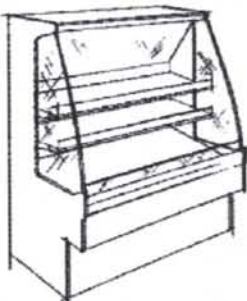
a 76 " high self-service
produce merchandiser case.

- High volume 3-level display
- Maximum 75 degrees Fahrenheit; maximum 55% relative humidity
- ETL Sanitation Listed to NSF Standard 7



Product Section

Image Gallery



MODEL	LENGTH		VOLTAGE	AMPS	
	in.	mm		remote	self-cont.
RPM-38-76-OS	38.25	972	115V/1/60 115V/1/60	3.1	15.1 7.5
RPM-48-76-OS	47.81	1214	115V/1/60 230V/1/60	3.1	13.5 8.7
RPM-57-76-OS	57.38	1457	115V/1/60 230V/1/60	3.3	13.5 8.7
RPM-76-76-OS	76.50	1943	115V/1/60 230V/1/60	6.2	19.5 9.6
RPM-96-76-OS	95.63	2429	115V/1/60 230V/1/60	6.2	19.5 9.6



View Image Gallery

SPECIFICATIONS:
Aluminum support frame; levelling legs; Series 300

EXHIBIT C

Superior Court of California, County of Santa Clara Court Holidays

Year: 2009

Holiday	Date
New Year's Day	Thursday, January 1
Martin Luther King, Jr. Day	Monday, January 19
Lincoln's Birthday	Thursday, February 12
Washington's Birthday	Monday, February 16
Cesar Chavez Day	Tuesday, March 31
Memorial Day	Monday, May 25
Independence Day	Friday, July 3
Labor Day	Monday, September 7
Columbus Day	Monday, October 12
Veterans Day	Wednesday, November 11
Thanksgiving	Thursday, November 26
Day after Thanksgiving	Friday, November 27
Christmas	Friday, December 25

Year: 2010

Holiday	Date
New Year's Day	Friday, January 1
Martin Luther King, Jr. Day	Monday, January 18
Lincoln's Birthday	Friday, February 12
Washington's Birthday	Monday, February 15
Cesar Chavez Day	Wednesday, March 31
Memorial Day	Monday, May 31
Independence Day	Monday, July 5
Labor Day	Monday, September 6
Columbus Day	Monday, October 11
Veterans Day	Monday, November 11
Thanksgiving	Thursday, November 25
Day after Thanksgiving	Friday, November 26
Christmas	Friday, December 24