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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **November 9, 2010**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 071B0200359
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Madison Electric Company** **31855 Van Dyke** **Warren, MI 48093** **Email: Bob.kasprzyk@madisonelectric.com**	TELEPHONE (586) 825-0200 **Robert Kasprzyk** Contractor Number / Mail Code BUYER/CA (517) 373-6535 **William Walsh**
Description: **Smart Meters/ Advanced Metering Infrastructure (AMI)**	
CONTRACT PERIOD: From: **September 15, 2010** To : **September 14, 2011**	
TERMS **Net 45**	SHIPMENT **5 Days ARO/ Installation Based on Complexity**
F.O.B. **FOB Delivered and Installed**	SHIPPED FROM **Various**
MINIMUM DELIVERY REQUIREMENTS **None**	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of RFP-071I0200281, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Total Estimated Contract Value: $10,000.00

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

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

CONTRACT NO. 071B0200359

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR **Madison Electric Company** **31855 Van Dyke** **Warren, MI 48093** **Email: Bob.kasprzyk@madisonelectric.com**	TELEPHONE (586) 825-0200 **Robert Kasprzyk** Contractor Number / Mail Code BUYER/CA (517) 373-6535 **William Walsh**
Description: **Smart Meters/ Advanced Metering Infrastructure (AMI)**	
CONTRACT PERIOD: From: **September 15, 2010**	To : **September 14, 2011**
TERMS **Net 45**	SHIPMENT **5 Days ARO/ Installation Based on Complexity**
F.O.B. **FOB Delivered and Installed**	SHIPPED FROM **Various**
MINIMUM DELIVERY REQUIREMENTS **None**	

MISCELLANEOUS INFORMATION:

The terms and conditions of this Contract are those of RFP-071I0200281, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Total Estimated Contract Value: $10,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP-071I0200281. Orders for delivery may be issued directly by the using Agency or MiDeal Member through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Madison Electric Company Firm Name	Signature
Authorized Agent Signature	**William Walsh, Manager** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Purchasing Operations** Division
Date	Date

Table of Contents

DEFINITIONS ***5***

Article 1 – Statement of Work ***7***

1.001 Project Identification **7**
1.002 Reports and Meetings 7

1.003 Pricing **7**
1.004 Tax Excluded from Price 7
1.005 MiDEAL 7

1.006 Commodity Specific Requirements and Terms ***7***
1.106 Alternate Bids – Deleted Not Applicable 7
1.108 Warranty for Deliverables 8
1.109 Special Incentives- Deleted Not Applicable 8
1.110 Minimum Order 8

1.111 Delivery Time Frames **8**
1.112 Delivery Term 8
1.113 Packaging and Palletizing 8
1.114 Place of Performance 8
1.115 Subcontractors 9
1.116 Energy Efficiency and Environmental Requirements 9
1.117 Samples – Deleted Not Applicable 10

Article 2, Terms and Conditions ***11***
2.001 Contract Term 11
2.002 Options to Renew 11
2.003 Ordering 11
2.004 Order of Precedence 11
2.005 Form, Function & Utility 11
2.006 Survival 11
2.007 Contract Administration 12
2.008 Contract Changes 12
2.009 Price Changes 12
2.010 Contractor’s Liability Insurance 12
2.011 General Indemnification 14
2.012 Employee Indemnification 14
2.013 Patent/Copyright Infringement Indemnification 15
2.014 Warranty of Merchantability 15
2.015 Warranty of Fitness for a Particular Purpose 15
2.016 Warranty of Title 15
2.017 Equipment Warranty 15
2.018 Equipment to be New 16
2.019 Prohibited Products 16
2.020 Continuing Obligation 16
2.021 Indemnification Procedures 16
2.022 Notice and Right to Cure 17
2.023 Termination for Cause 17
2.024 Termination for Convenience 18
2.025 Termination for Non-Appropriation 18
2.026 Termination for Criminal Conviction 18
2.027 Termination for Approvals Rescinded 18
2.028 Rights and Obligations upon Termination 18
2.029 Reservation of Rights 19
2.030 Contractor Transition Responsibilities 19
2.031 Transition Payments 19
2.034 Stop Work Order 19
2.035 Termination of Stop Work Order 19
2.036 Allowance of the Contractor's Costs 20

2.037 Dispute Resolution....20
2.038 Informal Dispute Resolution....20
2.039 Injunctive Relief....20
2.040 Continued Performance....20
2.041 Nondiscrimination....20
2.042 Unfair Labor Practices....21
2.043 Governing Law....21
2.044 Compliance with Laws....21
2.045 Jurisdiction....21
2.046 Limitation of Liability....21
2.047 Time of Performance....21
2.048 MiDEAL Requirements....21
2.050 State Employee Purchase Requirements....22
2.051 Environmental Provision....22
2.052 Employment Taxes....23
2.053 Sales and Use Taxes....23
2.054 Electronic Payment Requirement....23
2.055 Notices....23
Attachment A, Price Proposal
Attachment B, Specifications

DEFINITIONS

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

Buyer – the DTMB-Purchasing Operations employee identified on the cover page of this Contract.

Chronic Failure - as defined in any applicable Service Level Agreements.

Contract - this agreement once approved by the Contractor and the State, the Buyer, DTMB-Purchasing Operations Director, and the State Administrative Board.

Contractor – the awarded bidder once this agreement is approved by the State.

Days - Business Days unless otherwise specified.

Deleted – Not Applicable - the section that is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

Deliverables - physical goods or commodities as required or identified by a Statement of Work.

DTMB - the Michigan Department of Management and Budget

Effective Date - the date that this agreement receives the final signature necessary to form a binding contract.

Final Acceptance - has the meaning provided in Section 2.257, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated in **Sections 1.031** and 2.062 as Key Personnel, subject to the restrictions of Section 2.062.

Post-Industrial Waste - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Purchase Order - a written document issued by the State which requests full or partial performance of the Contract.

Request For Proposal (RFP) - a document designed to solicit proposals.

Service Level Agreement (SLA) - an agreement to provide an identified level of service in performing the Contract.

Statement of Work (SOW) – Article 1 of the Contract that defines the work to be performed.

State - the State of Michigan.

State Location - any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

Subcontractor - a company Contractor delegates performance of a portion of the Deliverables to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal - the Contractor's removal of Key Personnel without the prior written consent of the State.

Article 1 – Statement of Work

1.001 Project Identification

This optional use Contract is for smart metering devices/ advanced metering infrastructure (AMI), installation and metering services to be used by various State Agencies and MiDeal Members.

Specifications for this commodity are listed on Attachment B.

1.002 Reports and Meetings

Reports shall be submitted as requested by the State of Michigan.

Contractor's awarded contracts that are available for purchases by MiDEAL program members (authorized local units of government), must submit reports of purchasing activities to Purchasing Operations, DTMB on a quarterly basis. Reports shall include, at a minimum, an itemized listing of purchasing activities by each agency, with the agency name, and the total value of purchases for each agency, and a grand total of all purchases.

The State may request a kick-off meeting with the Contractor within thirty (30) days of the Contract Effective Date.

1.003 Pricing

The Pricing and Discount Schedule for this Contract is listed on Attachment A

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

The Contractor's price includes the administrative fee in Section 2.049, State Administrative Fee

1.004 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DTMB will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.005 MiDEAL

The Management and Budget Act, MCL 18.1263, permits the State to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, or community or junior college (MiDEAL Members). A current listing of approved MiDEAL Members is available at: www.michigan.gov/mideal. Estimated requirements for MiDEAL Members are not included in the quantities shown in this Contract.

The Contractor must supply Deliverables to the State and MiDEAL Members at the established State contract prices and terms, subject to Section 2.048, MiDEAL Requirements.

1.006 Commodity Specific Requirements and Terms

1.106 Alternate Bids – Deleted Not Applicable

1.107 Customer Service

The Contractor is able to receive orders by any of the following methods: electronically, by phone, facsimile, and by written order. The Contractor must have internal controls, approved by Purchasing Operations, to: (1) ensure that only authorized individuals place orders; and (2) verify any orders that appear to be abnormal.

The Contractor must have: (1) a knowledgeable individual specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (2) a statewide toll-free number for customer service calls.

The account manager assigned to the State of Michigan is Robert Kasprzyk of Madison Electric 586-825-0200. Technical services calls are handled by the manufacture at 1-888-778-2733, option 1, then option 3.

1.108 Warranty for Deliverables

All warranty issues are handled by the warranty specialist at Madison Electric, 586-825-0210 extension 3370. Customers can contact our warranty specialist during normal business hours to initiate a material return for repair or replacement by the manufacturer.

1.109 Special Incentives- Deleted Not Applicable

1.110 Minimum Order

There is no minimum order quantities for the products and services described in this Contract.

1.111 Delivery Time Frames

All deliverables will be delivered within 5 Business Days after receipt of order. However, Installation Time frames will be based on quality and complexity of the installation site.

1.112 Delivery Term

Prices Quoted are "F.O.B. Delivered and Installed" with transportation charges prepaid on all orders.

1.113 Packaging and Palletizing

Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate. Shipments must be palletized whenever possible. Manufacturer's standard 4-way shipping pallets must be used. The Contractor must explain if it cannot meet these standards.

The Contractor's shipping process complies with ISO 9001:2008 and MIL-STD 2073.

1.114 Place of Performance

The following Contractor facilities will be involved in performing this Contract:

Full address of place of performance	**Owner/Operator of facility to be used**	**Percent (%) of Contract value to be performed at listed location**
31855 Van Dyke Avenue, Warren, MI 48093	Joseph Schneider, President Madison Electric	100%

1.115 Subcontractors

Below is a listing of work which will be subcontracted:

Description of work to be subcontracted	**Percent (%) of total contract value to be subcontracted**	**Subcontractor's name and principal place of business (City and State)/ Contact Person**
Engineering, design and technical support	30%	Schneider Electric, Troy Michigan, Parag Chandrakapure
Shut-down scheduling and meter installation	20%	MCMI, Sterling Heights Michigan, Anthony Markel

Information with respect to the subcontractors listed can be found at: **http://www.mcmi.net and http://www.schneider-electric.com/sites/corporate/en/home.page**

1.116 Energy Efficiency and Environmental Requirements

The State prefers to purchase energy-efficient products, including "Energy Star" certified products.

Although the Contractor is an Energy Star partner, the scope and nature of this project's focus is one of power monitoring versus power consumption.

Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals. The Contractor must explain if it intends to provide such products, including any relevant third-party certification (such as Green Seal, etc.).

Recycled Content and Recyclability

A. Deliverables

Without compromising performance or quality, the State prefers Deliverables containing higher percentages of recycled materials. The Contractor must indicate an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

____0_____ % (total estimated percentage of recovered material)

____0_____ % (estimated percentage of post-consumer material)

____0_____ % (estimated percentage of Post-Industrial Waste)

B. Packaging

The State prefers packaging materials that:

a. are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
b. minimize or eliminate the use of polystyrene or other difficult to recycle materials;
c. minimize or eliminate the use of packaging and containers and, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;

d. provide for a return program where packaging can be returned to a specific location for recycling; and
e. contain materials that are easily recyclable in Michigan.

The Contractor must explain if it intends to offer packaging materials that meet one or more of these criteria.

The Contractor's packaging material is 100% recyclable and the dunnage is made from recyclable material.

Materials Identification and Tracking

A. Hazardous Chemical Identification.

The Contractor must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number
None	

B. Mercury Content.

Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. The Contractor must explain if it intends to provide products containing mercury and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Contractor must disclose the amount or concentration of mercury and justification as to why this particular product is essential. All products containing mercury must be labeled as containing mercury.

There is no mercury content for the products listed in this Contract.

C. Brominated Flame Retardants.

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs

There are no BFRs in the products listed in this Contract.

D. Environmental Permits and Requirements

The Contractor must disclose whether any of its facilities are in violation of any environmental laws. The Contractor must immediately notify DTMB-Purchasing Operations of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

None of the Contractor's facilities violate environmental laws.

1.117 Samples – Deleted Not Applicable

Article 2, Terms and Conditions

2.001 Contract Term

The proposed Contract is expected to begin September 15, 2010 and expires September 14, 2011. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Sections 2.023 – 2.027, Termination, unless otherwise agreed to in writing by DTMB-Purchasing Operations. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's stated term will remain in effect until the next September 30.

The Contractor must not begin performance of the Contract until the Contractor receives a request under Section 2.003 (Ordering). The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until a request has been issued under Section 2.003 (Ordering).

2.002 Options to Renew

This Contract may be renewed for up to two (2) additional one (1) year period(s). Renewal must be by mutual agreement of the parties, communicated in writing, not less than 30 days before expiration of the Contract.

2.003 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.004 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

(1) Mandatory sections (2.001, Contract Term, 2.010, Insurance, 2.011 – 2.013, Indemnification, 2.023 – 2.027, Termination, 2.041 – 2.042, Federal and State Contract Requirements, 2.043, Governing Law, 2.046, Limitation of Liability) from Article 2, Terms and Conditions
(2) The most recent Project Identification related to this Contract;
(3) All sections from Article 2, Terms and Conditions, not listed in subsection (1);
(4) Any attachment or exhibit to the Contract documents;
(5) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
(6) Contractor Responses contained in any of the Contract documents.

2.005 Form, Function & Utility

If this Contract is for state-wide use, but the Deliverable(s) does not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

2.006 Survival

The provisions of this Contract that impose continuing obligations on the parties, including the parties' warranties, duties to indemnify, and confidentiality obligations, will survive the expiration or termination of this Contract.

2.007 Contract Administration

This Contract is issued by DTMB-Purchasing Operations on behalf of the Department of Technology, Management & Budget and MiDeal members (State). DTMB-Purchasing Operations **is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Purchasing Operations for this Contract is:

Bill Walsh, Buyer Manager
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
517-373-6535

2.008 Contract Changes

No proposed change may be performed until DTMB-Purchasing Operations issues a duly executed Contract Change Notice for the proposed change.

2.009 Price Changes

The State and Contractor will complete a pricing review ("Review") every 365 days following Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). If provided, the documentation will be used to evaluate whether charges for substantially similar services remain competitive.

(a) The State may request a Review upon thirty (30) days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have thirty (30) days to review the supporting information and prepare any written response.

(c) In the event a Review indicates no need for modifications of any type, pricing will remain unchanged unless mutually agreed by the parties. However, if a Review indicates changes may be recommended, both parties will negotiate in good faith for thirty (30) days unless extended by mutual agreement of the parties.

(d) If the supporting information indicates a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one (1) year option, if available.

(e) If the supporting information indicates a reduction in prices is necessary and the parties are unable to reach agreement, then it is at the State's discretion as to rather to continue the contractual relationship or purchase the supplies and or services elsewhere.

(f) Any changes based on the Review must be implemented through issuance of a Contract Change Notice.

2.010 Contractor's Liability Insurance

(a) The Contractor must provide proof of the minimum levels of insurance coverage indicated. The insurance must protect the State from claims that may arise out of or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(b) The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) The Contractor's insurance coverage must be written for not less than any minimum coverage specified in this Section or required by law, whichever is greater.

(e) Unless the State approves, any insurer must have an A.M. Best rating of "A" or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

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

☑ i. Commercial General Liability Insurance with the following minimum coverage:

$1,000,000 General Aggregate Limit other than Products/Completed Operations;
$1,000,000 Products/Completed Operations Aggregate Limit;
$1,000,000 Personal & Advertising Injury Limit; and
$1,000,000 Each Occurrence Limit.

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

☑ ii. If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law, including all owned, hired, and non-owned vehicles used by the Contractor.

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

☑ iii. Workers' Compensation coverage must be provided according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur. The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable.

Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ iv. Employers Liability Insurance with the following minimum limits:

$100,000 each accident;
$100,000 each employee by disease; and
$500,000 aggregate disease.

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

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

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

☐ viii. Fire and Personal Property Insurance covering any loss or damage to the office space, equipment, software, and other contents of the office space used by the Contractor to perform work under this Contract, up to its replacement value, where the office space and its contents are under the Contractor's care, custody, and control. The policy must cover all risks of direct physical loss or damage, including flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.011 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortuous acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.012 Employee Indemnification

In any claims against the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.013 Patent/Copyright Infringement Indemnification

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

2.014 Warranty of Merchantability

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

2.015 Warranty of Fitness for a Particular Purpose

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

2.016 Warranty of Title

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

2.017 Equipment Warranty

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in this Contract,

when installed, at the time of Final Acceptance by the State, and for a period of one year commencing upon the first day following Final Acceptance.

Within 5 business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.018 Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.019 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract.

2.020 Continuing Obligation

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.021 Indemnification Procedures

These procedures apply to all indemnity obligations.

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the

claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim, and; (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.022 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.023 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverables that are terminated. The State must pay for all Deliverables for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.024, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.024 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible; (c) unacceptable prices for Contract changes requested by the State; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any Contract issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverables that are terminated.

2.025 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all Work-in-Process performed through the effective date of the termination to the extent funds are available.

2.026 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract or subcontract.

2.027 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all Work-in-Process performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.028 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must:

(1) stop all work as specified in the notice of termination;

(2) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverables or other State property in the Contractor's possession;

(3) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;

(4) transfer title in and deliver to the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials); and

(5) to the maximum practical extent, take any action to mitigate and limit potential damages , including terminating or limiting subcontracts and outstanding orders for materials and supplies.

(b) If the State terminates this Contract under Sections 2.024, Termination for Convenience, the State must pay the Contractor all charges due for Deliverables provided before the date of termination and, if applicable, as a separate item of payment, for Work-in-Process, based on a percentage of completion determined by the State. All completed or partially completed Deliverables prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverables. Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverables not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverables, and may pursue completion of the Deliverables by replacement contract or as the State deems expedient.

2.029 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.030 Contractor Transition Responsibilities

If this Contract terminates under Sections 2.023 – 2.027, Termination, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor will provide any required reports and documentation.

2.031 Transition Payments

If the transition responsibilities outlined in Section 2.030 arise based on a termination of this Contract, reimbursement will be governed by the provisions of Sections 2.023 – 2.027, Termination. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred after the expiration within the time period in Section 2.030 that result from transition operations) at the Contract rates. The Contractor will prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.034 Stop Work Order

The State may, by Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Sections 2.023 – 2.027**,** Termination.

2.035 Termination of Stop Work Order

The Contractor must resume work if the State terminates a Stop Work Order, or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order; provided that, the State may receive and act upon the Contractor's proposal submitted at any time before final payment. Any adjustment will conform to the requirements of **Section 2.008, Contract Changes**.

2.036 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Sections 2.023 – 2.027, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under **Section 2.034, Stop Work.**

2.037 Dispute Resolution

(a) The Contractor must submit any claim related to this Contract to the State in writing, together with all supporting documentation for the claim..

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.038 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.034, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Purchasing Operations, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Purchasing Operations, or such other time as agreed to by the parties, the Director of DTMB-Purchasing Operations will issue a written opinion regarding the claim. The opinion will be considered the State's final action and the exhaustion of administrative remedies.

(c) Section 2.038, Informal Dispute Resolution, will not be construed to prevent either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.039, Injunctive Relief.

(d) DTMB-Purchasing Operations will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.039 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.038, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.040 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Sections 2.023 – 2.027, Termination. A claim involving payment does not preclude performance.

2.041 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and any breach of this provision may be regarded as a material breach of the Contract.

2.042 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq*., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.043 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction, to the extent not inconsistent with or preempted by federal law.

2.044 Compliance with Laws

The Contractor must comply with all applicable state, federal, and local laws and ordinances in providing the Deliverable(s).

2.045 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.046 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.047 Time of Performance

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.048 MiDEAL Requirements

(a) The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing.

(b) The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.

(c) To the extent that MiDEAL Members purchase Deliverables under this Contract, the quantities of Deliverables purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

(d) The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.

2.049 State Administrative Fee

The Contractor must collect an administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals one (1) percent of the total quarterly sales reported.

The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.

The Contractor must send the check to the following address:

Department of Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

2.050 State Employee Purchase Requirements

(a) The Contractor must supply Deliverables to State employees at the established State contract prices and terms.
(b) The Contractor must ensure that the purchaser is a State employee.
(c) The Contractor must send its invoices to and collect payment from the State employee on a direct and individual basis.
(d) To the extent that State employees purchase Deliverables under this Contract, the quantities of Deliverables purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.051 Environmental Provision

For the purposes of this section, “Hazardous Materials” includes asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment.

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must (1) immediately stop all affected work; (2) notify the State in accordance with Section 2.055, Notices; (3) notify any entities required by law; and (4) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State’s convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.052 Employment Taxes

Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.053 Sales and Use Taxes

Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (1) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (2) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references “two or more trades or businesses under common control” includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.054 Electronic Payment Requirement

As required by 1984 PA 431, MCL 18.1283a Contractor must register with the State electronically at http://www.michigan.gov/cpexpress to receive electronic fund transfer (EFT) payments.

2.055 Notices

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

State:
State of Michigan
Purchasing Operations
Attention: William Walsh
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:
Madison Electric Company
31855 Van Dyke
Warren, MI 48093

Either party may change its address where notices are to be sent by giving notice according to this Section.

Attachment A, Price Proposal

Qty	Catalog #	Description	Category discount all other items	List Price	Unit Price	PD Category
		PowerLogic Split-Core CT's	**29 Percent**	-		
3	3090SCCT022	Split Core CT - 200A (sz.2): 1.25" x 1.51"		$120.00	$85.07	09795
3	3090SCCT032	Split Core CT - 300A (sz.2): 1.25" x 1.51"		$120.00	$85.07	09795
3	3090SCCT043	Split Core CT - 400A (sz.3): 2.45" x 2.89"		$129.00	$91.45	09795
3	3090SCCT063	Split Core CT - 600A (sz.3): 2.45" x 2.89"		$129.00	$91.45	09795
		NEMA 1Enclosed , Three phase Meter Package	**29 Percent**	-		
1	HDMPM7504T311	HDM, 480V Delta, 3Ph, 1 Meter Box, 1 meter installed - PM750		$1,000.00	$708.90	09731
1	HDM62004T311	HDM, 480V Delta, 3Ph, 1 Meter Box, 1 meter installed - 6200		$900.00	$638.01	09731
1	HDMPM8204T311	HDM, 480V Delta, 3Ph, 1 Meter Box, 1 meter installed - PM820		$2,300.00	$1,630.47	09731
		ION Enterprise v6.0 New Purchases	**29 Percent**	-		
1	IE60BASEENG	ION Enterprise Base software v6.0		$1,079.00	$764.90	09760
1	IE60DLS	ION Enterprise Single Device License		$252.00	$178.64	09760
1	IE60CL	ION Enterprise Client License		$1,079.00	$764.90	09760
		PMO-ES Standardized PC Hardware	**29 Percent**	-		
1	9788TWSVRS1	Dell Poweredge T410, Tower, Quad Core Xeon E5520 8M Cache 2.26GHz 1066MHz FSB, 4GB DDR2 1066MHZ (2X2GB) Dual Ranked RAM, 2 x 146GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug, SAS6/iR (SATA/SAS Controller) supporting 2 Hot-Plug HDs - RAID 1, Onboard GB NIC,		$7,242.00	$5,133.85	09792
1	9788FP22	Dell Ultra Sharp, 22" Wide LCD, 1680x1050 Max Pixel Resolution, Digital DVI-D and Analog Inputs,		$582.00	$412.58	09792

		Adjustable Height Stand w/ Swivel & Tilt, USB 2.0 Ports				
		ES - Factory Assembled Enclosures	**29 Percent**	-		
1	9761E0820R1C2B2B	Industrial UL Listed Pad-Lockable Enclosure. Nameplates Available Upon Request (Provide Nameplate Schedule With Order). Meter Type: PM820 Remote Display Meter. (Meter Part # PM820RD) Enclosure Type and Meter Quantity: NEMA 12 Enclosure with one mete		$4,031.00	$2,857.44	09792
		ES - Factory Assembled Enclosures	**29 Percent**	-		
1	9761E6200R1C2B2C	Industrial UL Listed Pad-Lockable Enclosure. Nameplates Available Upon Request (Provide Nameplate Schedule With Order). Meter Type ION 6200 Remote Display. Enclosure Type and Meter Quantity: NEMA 12 Enclosure with one meter with remote display Installe		$3,334.00	$2,363.47	09792
		ES - Factory Assembled Enclosures	**29 Percent**	-		
1	9761EGX100T0	Industrial UL Listed Pad-Lockable Enclosure. Nameplates Available Upon Request (Provide Nameplate Schedule With Order). Device Type: EGX100 Communications Gateway. (Device Part # EGX100SD) Enclosure Type and Device Quantity: NEMA 12 Enclosure with 1		$1,929.00	$1,367.79	09792
		ES - Factory Assembled Enclosures	**29 Percent**	-		

1	9761E75RTUA1C2	Industrial UL Listed Pad-Lockable Enclosure. Nameplates Available Upon Request (Provide Nameplate Schedule With Order). Device Type: ION 7550RTU Communications Gateway with Integrated Display. (RTU Part # S7550A0N9B9A0A0A) Enclosure Type and Device Q		$5,636.00	$3,995.22	09792

MISCELLANEOUS SPARE PARTS BELOW

Square D General Purpose Controls	**40 Percent**	DISCOUNT SCHEDULE CP1
RELAYS & CONTACTORS		
Square D General Purpose Control Transformers	**40 Percent**	DISCOUNT SCHEDULE CP8
Square D Manual pilot devices	**40 Percent**	DISCOUNT SCHEDULE I
SQUARE D Safety Switches	**45 Percent**	DISCOUNT SCHEDULE DE1

Initial Site Survey for Advanced Metering	***NO Charge***

Attachment B, Specifications

1.0 APPLICATION OF SPECIFICATION

This Specification sets the required minimum level of functionality for smart meters/AMI requested in this solicitation. This Specification is not intended to apply to net metering applications

2.0 FUNCTIONAL SPECIFICATION

2.1 Deployment

This Specification shall be met regardless of the size or scope of the AMI deployment by a distributor.

2.2 Minimum Functionality

2.2.1 As a minimum:

2.2.1.1 AMI shall collect Meter Reads on an hourly basis from all AMCDs deployed by a distributor and transmit these same Meter Reads to the AMCC and MDM/R, as required, in accordance with these Specifications; and

2.2.1.2 A Meter Read shall be collected, dated and time stamped at the end of each hour (i.e. midnight as represented by 24:00).

2.2.2 The date and time stamping of Meter Reads shall be recorded as year, month, day, hour, minute (i.e. YYYY-MM-DD hh:mm).

2.2.3 All meters shall have a meter multiplier of one (1).

2.3 Performance Requirements

2.3.1 Collection and Transmission of Meter Reads:

2.3.1.1 AMI shall successfully collect and transmit to the AMCC and MDM/R at least 98.0% of the Meter Reads from all AMCDs in any Daily Read Period.

2.3.1.2 Meter Reads unsuccessfully collected or transmitted shall not be due to the same AMI component (including, without limitation, any AMCD) during any three (3) month consecutive time period.

2.3.1.3 AMI shall be able to collect and transmit Meter Reads during its operating life without requiring a field visit.

2.3.2 Transmission Accuracy: Over the Daily Read Period, 99.9% of the Meter Reads received by the AMCC shall contain the same information as that collected by all AMCDs

2.3.3 AMI shall be capable of providing Meter Reads with a precision of at least 10 Watt-hours (0.01 kWh).

2.4 Technical Requirements

2.4.1 When an AMI includes AMRCs, the AMRCs shall have the ability to store meter data to accommodate the performance requirements in section 2.3.1.

2.4.2 Time Synchronization

2.4.2.1 AMI shall be operated and synchronized to the Eastern Time Zone.

2.4.2.2 AMI shall have the capability of adjusting for changes due to local daylight savings time.

2.4.2.3 Time Synchronization shall be maintained in the AMI to the specified accuracy parameters set out in section 2.4.3.1 following a loss of power.

2.4.2.4 All Meter Reads shall adhere to accurate time synchronization processes to ensure an accurate accounting of electricity consumption at each meter.

2.4.3 Time Accuracy

2.4.3.1 At all times, time accuracy in the AMI shall not exceed a ±1.5 minute variance from the time established in section 2.4.3.1.

2.4.3.2 AMI shall be able to prove that time accuracy does not exceed the permitted time variance identified in section 2.4.3.1.

2.4.4 Loss and Restoration of Power

2.4.4.1 AMI shall detect and identify the interval in which a loss of power occurred during a Daily Read Period.

2.4.4.2 AMI shall detect and identify the interval in which power was restored following a loss of power.

2.4.5 Environmental Tolerances: All AMI components (except the AMCC) shall operate and meet the requirements in these Specifications within a temperature range of minus 20 degrees Fahrenheit (-20º F) to positive one hundred forty degrees Fahrenheit (140º F)

2.5 Advanced Metering Communication Device (AMCD)

2.5.1 Installation Within the Meter:

2.5.1.1 The AMCD shall not impair the ability of the meter to be visually read.

2.5.1.2 Meters in which an AMCD is installed shall be able to be installed in existing meter sockets or enclosures.

2.5.1.3 AMCD shall meet or exceed ANSI standards to withstand electrical surges and transients.

2.5.2 Labeling:

2.5.2.1 The AMCD shall be permanently labeled with:

(1) Legally required labeling;
(2) Manufacturer's name;
(3) Model number;
(4) AMCD identification number;
(5) Date of manufacture; and
(6) Bar code for tracking and inventory management.

2.5.3 When installed at a consumer's location, the meter shall visibly display, as a minimum, the AMCD identification number, meter serial number and LDC badge number for the meter.

2.5.4 The AMCD shall be able to be initialized or programmed during, or prior to, field installation.

2.6 Transmission of Meter Reads

2.6.1 All Meter Reads collected during the Daily Read Period shall be received by the AMCC and transferred to the MDM/R no later than 5:00 a.m. local time (EST) following the Daily Read Period.

2.6.2 Meter Reads are not required to be transmitted in a single transmission and may be transmitted as frequently as necessary in order to meet the requirements in section 2.6.1.

2.6.3 AMCC shall transfer the information identified in section 2.6.1 using an approved protocol and file structure.

2.7 Advanced Metering Regional Collectors (AMRC)

2.7.1 LAN Communication Infrastructure

2.7.1.1 The spectrum allocation and wattage of the radio signal used by an AMI shall not impede neighboring frequencies.

2.7.2 When an AMI includes AMRCs:

2.7.2.1 The AMI shall provide for the continuous powering of AMRCs regardless of their location and placement.

2.7.2.2 All AMCDs shall be able to collect and transmit Meter Reads when one or more AMRC has a loss of power

2.7.2.3 Memory and software parameters shall be maintained at all AMRC during a loss of power, whether by the provision of backup/alternate power or other solution.

2.8 Advanced Metering Control Computer (AMCC)

2.8.1 Each AMCC shall have the ability to store a rolling sixty (60) days of Meter Reads.

2.8.2 A distributor shall not aggregate Meter Reads into rate periods or calculate consumption data from Meter Reads collected through its MI either in its AMCC or any other component.

2.8.3 The AMCC shall be able to perform basic operational verification of Meter Reads received before transmitting these Meter Reads to the MDM/R.

2.9 Customer Account Information

2.9.1 Distributors shall provide initial information associated with customer accounts to the MDM/R on a date to be determined.

2.9.2 On an ongoing basis, distributors shall provide information associated with any change to the initial information identified in section 2.9.1 to the MDM/R at a frequency to be determined.

2.9.3 Information to be provided to the MDM/R pursuant to sections 2.9.1 and 2.9.2 is to be determined.

2.10 Monitoring & Reporting Capability

2.10.1 The AMI shall have non-critical reporting functionality and critical reporting functionality as required in this section 2.10. Information generated from this reporting functionality shall be available to the MDM/R.

2.10.2 Non-critical reporting:

2.10.2.1 At the completion of every Daily Read Period and following a transmission of Meter Reads, the AMCC shall generate a status report that includes information regarding anomalies and issues affecting the integrity of the AMI or any component of the AMI including information related to any foreseeable impact that such anomalies or issues might have on the AMI's ability to collect and transmit Meter Reads.

2.10.1.1 In addition to section 2.10.2.1, the AMCC shall generate reports:

(1) Confirming successful initialization of the AMCDs installed in the field;

(2) Confirming data linkages among an AMCD identification number, LDC badge number, serial number and customer account;

(3) Confirming that the MDM/R has successfully received notification of any changes to customer account information;
(4) Confirming that the AMCC has successfully made changes to customer account information following receipt of same from the MDM/R;
(5) Confirming the successful collection and transmission of Meter Reads or logging all unsuccessful attempts to collect and transmit Meter Reads, identifying the cause, and indicating the status of the unsuccessful attempt(s) pursuant to section 2.3.1;
(6) Confirming the accuracy of the Meter Reads received by the AMCC pursuant to section 2.3.2;
(7) Confirming that all Meter Reads have a precision of at least 10 Watt-hours (0.01 kWh) pursuant to section 2.3.3;
(8) Confirming whether the Meter Reads acquired within the Daily Read Period are in compliance with the time accuracy levels identified in section 2.4.3;
(9) Confirming whether time synchronization within the AMI or any components of the AMI has been reset within the Daily Read Period;
(10) Identifying the intervals in which a loss of power occurred and at which power was restored, following a loss of power;
(11) Addressing the functionality of the AMCD communication link, including status indicators related to the AMCD and AMRC;
(12) Identifying suspected instances of tampering, interference and theft;
(13) Flagging potential network, meter and AMCD issues; and
(14) Identifying any other instances that impact or could potentially impact the AMI's ability to collect and transmit Meter Reads to the AMCC and/or MDM/R on a daily basis

2.10.2.3 Following a transmission of Meter Reads or at the completion of every Daily Read Period, the information in section 2.10.2.2 (5) shall be stored and used by the AMCC to assess compliance with the requirement specified in section 2.3.1.2.

2.10.2.4 The reports generated in sections 2.10.2.1 and 2.10.2.2 shall be made available to the MDM/R with a frequency to be determined.

2.10.3 Critical Reporting

Critical events are defined to include any AMI operational issue that could adversely impact the collection and transmission of Meter Reads during any daily Read Period.

2.10.2.1 The AMI shall identify and report the following to the distributor:
(1) AMCD failures;
(2) AMRC failures;
(3) Issues related to the storage capacity of any component of the AMI;
(4) Communication links failures;

(5) Network failures; and
(6) Loss of power and restoration of power.

2.10.3.2 The reports generated in section 2.10.3.1 shall be made available to the MDM/R.

2.11 Security and Authentication:

2.11.1 The AMI shall have security features to prevent unauthorized access to the AMI and meter data and to ensure authentication to all AMI elements.

2.12 Proven Technology

2.12.1 The AMI shall be a technology that has been proven to reliably comply with these Specifications.

2.13 Regulatory Requirements

2.13.1 The AMI shall meet all applicable federal, state, and municipal laws, codes, rules, directions, guidelines, regulations, and statutes (including any requirements of any applicable regulatory authority)

2.14 Water or Natural Gas Meter Reads

2.14.1 The AMI should be capable of supporting an increased number of Meter Reads associated with the reading and transmission of water and/or natural gas meters through additional ports on the AMCD, through optionally available multi-port AMCDs, or through additional AMCD/AMRC devices that are compatible with operating on the AMI. When procuring AMI, distributors shall obtain an indication of the capabilities of the proposed AMI to read water and natural gas meters, indicating the makes and models of such meters that can be read, and any requirements for retrofitting them.

3.0 Definitions

Within this Specification the following words and phrases have the following meanings:

"AMCC" is an advanced metering control computer that is used to retrieve or receive and temporarily store Meter Reads before or as they are being transmitted to the MDM/R. The information stored in the AMCC is available to log maintenance and transmission faults and issue reports on the overall health of the AMI to the distributor.

"AMCD" is an advanced metering communication device that is housed either under the meter's glass or outside the meter. It transmits Meter Reads from the meter directly or indirectly to the AMCC.

"AMI" means and advanced metering infrastructure. It includes the meter, AMCD, LAN, AMRC, AMCC, WAN and related hardware, software and connectivity required for a fully functioning system that complies with this Specification. With some technologies, an AMI does not include AMRCs. An AMI does not include the MDM/R.

"AMRC" is an advanced metering regional collector that collects Meter Reads over the LAN from the AMCD and transmits these Meter Reads to the AMCC.

"consumer" or "customer" means a person who uses, for the person's own consumption, electricity that the person did not generate.

"Daily Read Period" means the 24-hour period for collecting Meter Reads, subject to the two periods annually during which changes to and from daylight savings time take place. The Daily Read Period ends at 12:00 midnight of each day.

"LAN" means a local area network, the communication network that transmits Meter Reads from the AMCD to the AMRC.

"meter multiplier" is the factor by which the register reading must be multiplied to obtain the registration in the stated units.

"Meter Read" is a number generated by a meter that reflects cumulative electricity consumption at a specific point in time.

"MDM/R" means the meter data management and meter data repository functions within which Meter Reads are processed to produce rate-ready data and are stored for future use.

"Specification" means these functional specifications.

"WAN" means a wide area network, the communication network that transmits Meter Reads from the AMRC to the AMCC or, in some systems from the AMCD directly to the AMCC, and from the AMCC to the MDM/R.