Form No. DTMB-3521 (Rev. 7/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

CHANGE NOTICE NO. 3
to
CONTRACT NO. 071B1300001
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Champion Chevrolet	Rick Resinger	rresinger@charmpion-chev.com
5000 East Grand River	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Howell, Mi 48843	(866) 236-4082	0523

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOT	Dan Smith	(517) 334-7767	Smithd4@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Yvon Dufour	517-284-6996	dufoury@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Vehicles, Patrol and Passenger Vehicles, Trucks, Vans, Cabs & Chassis			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2015	2, one year options	September 30, 2015
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30 Days		90-120 Days from ARO	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	1 Year	☐		September 30, 2016
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
$1.00	0.00	$1.00		

DESCRIPTION: Effective September 25, 2015, the first option year available on this contract is hereby exercised. The revised contract expiration date is September 30, 2016. Please note the Contract Administrator has been changed to Yvon Dufour. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **February 7, 2012**
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B1300001
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Champion Chevrolet** **5000 East Grand River** **Howell, MI 48843** **Email: rresinger@champion-chev.com**	TELEPHONE: (866) 236-4082 **Rick Resinger** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7374 **Klatra Pickett**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Vehicles, Patrol and Passenger Vehicles, Trucks, Vans, Cab & Chassis**	
CONTRACT PERIOD: **5yrs. + 2 one-year options** From: **October 1, 2010** To: **September 30, 2015**	
TERMS **NET 30 Days**	SHIPMENT **90 – 120 Days from ARO**
F.O.B. **MDOT – Delivered** **MIDEAL & Transit Agencies - Dealership**	SHIPPED FROM **Howell, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. (MIDEAL members) and MDOT authorized transit agencies.

NATURE OF CHANGE(S):

Effective February 7, 2012, the buyer has been changed to Klatra Pickett.

AUTHORITY/REASON:

Per DTMB Procurement approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $0.00

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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **November 4, 2010**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B1300001
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Champion Chevrolet** **5000 East Grand River** **Howell, MI 48843** **Email: rresinger@champion-chev.com**	TELEPHONE: (866) 236-4082 **Rick Resinger** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Vehicles, Patrol and Passenger Vehicles, Trucks, Vans, Cab & Chassis**	
CONTRACT PERIOD: **5yrs. + 2 one-year options** From: **October 1, 2010** To: **September 30, 2015**	
TERMS **NET 30 Days**	SHIPMENT **90 – 120 Days from ARO**
F.O.B. **MDOT – Delivered** **MIDEAL & Transit Agencies - Dealership**	SHIPPED FROM **Howell, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. (MIDEAL members) and MDOT authorized transit agencies.

NATURE OF CHANGE(S):

Effective immediately, the dealer's signed FTA clauses have been added to this contract per this change notice. See attached Appendix D.

Please note the buyer has been changed to Laura Gyorkos

AUTHORITY/REASON:

Per DTMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $0.00

Federally Required Contract Clauses (Rolling Stock)

Governing Documents
Purchases Greater than $100,000

Table of Contents:

INSTRUCTIONS 2
1. BUY AMERICA REQUIREMENTS 3
2. CARGO PREFERENCE REQUIREMENTS 5
3. ENERGY CONSERVATION REQUIREMENTS 5
4. CLEAN WATER REQUIREMENTS 5
5. BUS TESTING 6
6. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS 7
7. LOBBYING 9
8. ACCESS TO RECORDS AND REPORTS 10
9. FEDERAL CHANGES 12
10. CLEAN AIR 13
11. RECYCLED PRODUCTS 13
12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES 13
13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS 14
14. TERMINATION 15
15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) .. 18
16. PRIVACY ACT REQUIREMENTS 19
17. CIVIL RIGHTS REQUIREMENTS 20
18. BREACHES AND DISPUTE RESOLUTION 21
19. DISADVANTAGED BUSINESS ENTERPRISE (DBE) 22
20. DBE TRANSIT VEHICLE MANUFACTURER CERTIFICATION 23
21. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS 23

INSTRUCTIONS

About: This document contains the federally required contract clauses for a rolling stock procurement greater than $100,000.

Applicability: Some the attached clauses may or many not apply to your procurement. If you are procuring architectural engineering (A&E) services, materials, etc., other clauses will apply so check the FTA website for more information and applicability. **Federal Circular 4220.1F** ***Third Party Contracting Requirements*** **Appendix D** has a handy chart listing the federal model contract clauses, certifications, reports, forms, and their applicability:

www.fta.dot.gov/documents/FTA_Circular_4220.1F_-_Finalpub1.pdf

Complete list of Federal required and other model contract clauses:

www.fta.dot.gov/funding/thirdpartyprocurement/bppm/grants_financing_6195.html

Transit Agency Instructions: Read all the contract clauses and verify if they apply to your procurement. Insert your transit agency's **legal name** where applicable (parts 15, 19, and 21). Insert the applicable clauses in your request for proposal (RFP) or invitation for bid (IFB) or purchase order (if purchasing an applicable MiDEAL vehicle). The bidder/vendor shall sign all applicable clauses and return to the procuring agency. If this is local purchase, attach the clauses, including the winning bidder/vendor signed sections, in your third party contract to be submitted to MDOT. Copies should be filed with the procuring agency. If this is a MiDEAL purchase, keep on file, at the procuring agency, all clauses and vendor signed sections with the purchase order.

NOTE: If a bidder/vendor does not agree to all applicable Federal clauses/terms then the transit agency shall not procure the product from the bidder/vendor.

Bidder/Vendor Instructions: If applicable, complete sections 1, 5, 6, 7, and 20 and return to the procuring transit agency.

1. BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)
The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date 7/26/2010

Signature

Company Name CHAMPION CHEVROLET

Title GENERAL SALES MANAGER

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date 7/26/2010

Signature

Company Name CHAMPION CHEVROLET

Title GENERAL SALES MANAGER

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

2. CARGO PREFERENCE REQUIREMENTS 46 U.S.C. 1241/46 CFR Part 381

Use of United States-Flag Vessels - The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

3. ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq./49 CFR Part 18

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

4. CLEAN WATER REQUIREMENTS 33 U.S.C. 1251

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

5. BUS TESTING 49 U.S.C. 5323(c)/49 CFR Part 665

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS
The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

6. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS 49 U.S.C. 5323/49 CFR Part 663

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: 7/26/2010

Signature: _____

Company Name: CHAMPION CHEVROLET

Title: GENERAL SALES MANAGER

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

7. LOBBYING 31 U.S.C. 1352/49 CFR Part 19/49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, CHAMPION CHEVROLET, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

RICHARD W RESINGER GSM Name and Title of Contractor's Authorized Official

7/256/2010 Date

8. ACCESS TO RECORDS AND REPORTS 49 U.S.C. 5325/18 CFR 18.36 (i)/49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/Capital Projects	None None unless[1] non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru[2] 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
II Non State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/Capital Projects	Yes[3] Yes[3]	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:
[1] 49 USC 5325 (a)
[2] 49 CFR 633.17
[3] 18 CFR 18.36 (i)

9. FEDERAL CHANGES 49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

10. CLEAN AIR 42 U.S.C. 7401 et seq/40 CFR 15.61/49 CFR Part 18

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. RECYCLED PRODUCTS 42 U.S.C. 6962/40 CFR Part 247/Executive Order 12873

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

12. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq. /49 CFR Part 31 18 U.S.C. 1001/49 U.S.C. 5307

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

14. TERMINATION 49 U.S.C. Part 18/FTA Circular 4220.1F

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the

Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.
    a. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient

may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

15. <u>GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)</u>
49 CFR Part 29/Excutive Order 12549/Exectuve Order 12689/31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **{insert transit agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert transit agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. PRIVACY ACT REQUIREMENTS 5 U.S.C. 552

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

17. CIVIL RIGHTS REQUIREMENTS 29 U.S.C. § 623, 42 U.S.C. § 2000/42 U.S.C. § 6102, 42 U.S.C. § 12112/42 U.S.C. § 12132, 49 U.S.C. § 5332/29 CFR Part 1630/41 CFR Parts 60 et seq.

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of

U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

18. BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18/FTA Circular 4220.1F

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

a. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **{insert transit agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

b. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)). Accordingly, as a condition of permission to bid, a certification must be completed and submitted with the bid. A bid which does not include certification may not be considered.

20. DBE TRANSIT VEHICLE MANUFACTURER CERTIFICATION

_____(Name of Manufacturer), a TVM, hereby certifies that it has complied with the requirement of Section 26.49 of 49 CFR, Part 26 by submitting a current annual DBE goal to FTA. The goals apply to Federal Fiscal Year _____ (October 1, _____ to September 30, _____) and have been approved or not disapproved by FTA. _____(Name of Contract Vendor), hereby certifies that the manufacturer of the transit vehicle to be supplied _____ (Name of Manufacturer) has complied with the above referenced requirement of Section 26.49 of 49 CFR Part 26.

Signature: _____

Date: _____

Title: _____

Manufacturer: _____

21. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any **{insert transit agency name}** requests which would cause **{insert transit agency name}** to be in violation of the FTA terms and conditions.

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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **August 17, 2010**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 071B1300001
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Champion Chevrolet** **5000 East Grand River** **Howell, MI 48843** **Email: rresinger@champion-chev.com**	TELEPHONE: (866) 236-4082 **Rick Resinger** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1647 **Irene Pena**
Contract Compliance Inspector: Irene Pena (517) 241-1647 **Vehicles, Patrol and Passenger Vehicles, Trucks, Vans, Cab & Chassis**	
CONTRACT PERIOD: **5yrs. + 2 one-year options** From: **October 1, 2010** To: **September 30, 2015**	
TERMS **NET 30 Days**	SHIPMENT **90 – 120 Days from ARO**
F.O.B. **MDOT – Delivered** **MIDEAL & Transit Agencies - Dealership**	SHIPPED FROM **Howell, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. (MiDEAL Members) and MDOT authorized transit agencies.

The terms and conditions of this Contract are those of RFP #071I0200131, 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.

Estimated Contract Value: $0.00

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

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

CONTRACT NO. 071B1300001
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Champion Chevrolet** **5000 East Grand River** **Howell, MI 48843** **Email: rresinger@champion-chev.com**	TELEPHONE: (866) 236-4082 **Rick Resinger** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1647 **Irene Pena**
Contract Compliance Inspector: Irene Pena (517) 241-1647 **Vehicles, Patrol and Passenger Vehicles, Trucks, Vans, Cab & Chassis**	
CONTRACT PERIOD: **5yrs. + 2 one-year options** From: **October 1, 2010** To: **September 30, 2015**	
TERMS **NET 30 Days**	SHIPMENT **90 – 120 Days from ARO**
F.O.B. **MDOT – Delivered** **MIDEAL & Transit Agencies - Dealership**	SHIPPED FROM **Howell, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. (MiDEAL Members) and MDOT authorized transit agencies.** **The terms and conditions of this Contract are those of RFP #071I0200131, 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.** **Estimated Contract Value: $0.00**	

THIS IS NOT AN ORDER: Orders for delivery will be issued directly by the Department of Transportation, MiDEAL members, and authorized transit agencies through the issuance of a Purchase Order form.

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

FOR THE CONTRACTOR:	**FOR THE STATE:**
Champion Chevrolet Firm Name	Signature
Authorized Agent Signature	**William C. Walsh, Buyer Manager** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B1300001

Pre-Qualification of Michigan Domestic Auto Dealers
Patrol and Passenger Vehicles, Trucks, Vans, Cab & Chassis.

Buyer Name: Irene Pena
Telephone Number: 517-241-1647
E-Mail Address: penai1@michigan.gov

Table of Contents

Definitions **34**

Article 1 – Statement of Work ***35***

1.1 Project Identification **35**
1.1.1 Project Request 35
1.1.2 Background 35

1.2 Scope of Work and Deliverable(s) **35**
1.2.1 In Scope 35
1.2.2 Deliverable(s) 37
1.2.3 Quantity 38
1.2.4 Ordering 38
1.2.5 Alternate Bids 38

1.3 Management and Staffing **39**
1.3.1 Project Management 39
1.3.2 Reports 39
1.3.3 Staff, Duties, and Responsibilities 39
1.3.4 Meetings 39
1.3.5 Place of Performance 39
1.3.6 Subcontractors 39
1.3.7 Binding Commitments 39
1.3.8 Training 40
1.3.9 Security 40

1.4 Delivery and Acceptance **40**
1.4.1 Time Frames 40
1.4.2 Minimum Order 41
1.4.3 Packaging 41
1.4.4 Palletizing 41
1.4.5 Delivery Term 41
1.4.6 Acceptance Process 42
1.4.7 Criteria 42

1.5 Proposal Pricing **42**
1.5.1 Pricing 42
1.5.2 Quick Payment Terms 43
1.5.3 Price Term 43
1.5.4 Tax Excluded from Price 43
1.5.5 Invoices 43
1.5.6 Title Fees 44
1.5.7 Late Payment Terms 44
1.5.8 Manufacturer's Rebates (Incentives) 44
1.5.9 Quantity term 44

1.6 Commodity Requirements **44**
1.6.1 Customer Service 44
1.6.2 Research and Development 44
1.6.3 Quality Assurance Program 44
1.6.4 Warranty for Deliverable(s) 44
1.6.5 Special Incentives 45
1.6.6 Energy Efficiency 45
1.6.7 Environmental Requirements 45
1.6.8 Recycled Content and Recyclability 45
1.6.9 Materials Identification and Tracking 45

1.7 Extended Purchasing **46**
1.7.1 MiDEAL and Authorized Transit Agencies 46

1.7.2 State Employee Purchases 46

Article 2 – Terms and Conditions 47

2.1 Contract Term 47
2.1.1 Contract Term 47
2.2.2 Options to Renew 47

2.2 Payments and Taxes 47
2.2.1 Fixed Prices for Deliverable(s) 47
2.2.2 Payment Deadlines 47
2.2.3 Invoicing and Payment – In General 47
2.2.4 Pro-ration 47
2.2.5 Final Payment and Waivers 47
2.2.6 Electronic Payment Requirement 47
2.2.7 Employment Taxes 47
2.2.8 Sales and Use Taxes 47

2.3 Contract Administration 48
2.3.1 Issuing Office 48
2.3.2 Contract Compliance Inspector 48
2.3.3 Project Manager 48
2.3.4 Contract Changes 48
2.3.5 Price Changes 49
2.3.6 Notices 49
2.3.7 Covenant of Good Faith 49
2.3.8 Assignments 49
2.3.9 Equipment 49
2.3.10 Facilities 50

2.4 Contract Management 50
2.4.1 Contractor Personnel Qualifications 50
2.4.2 Contractor Key Personnel 50
2.4.3 Removal or Reassignment of Personnel at the State's Request 50
2.4.4 Contractor Personnel Location 50
2.4.5 Contractor Identification 50
2.4.6 Cooperation with Third Parties 50
2.4.7 Relationship of the Parties 51
2.4.8 Contractor Return of State Equipment/Resources 51
2.4.9 Background Checks 51
2.4.10 Compliance With State Policies 51

2.5 Subcontracting by Contractor 51
2.5.1 Contractor Responsible 51
2.5.2 State Approval of Subcontractor 51
2.5.3 Subcontract Requirements 51
2.5.4 Competitive Selection 52

2.6 Reserved 52

2.7 Performance 52
2.7.1 Time of Performance 52
2.7.2 Service Level Agreements 52
2.7.3 Liquidated Damages 52
2.7.4 Excusable Failure 53

2.8 Acceptance of Deliverable(s) 53
2.8.1 Quality Assurance 53
2.8.2 Delivery Responsibilities 53
2.8.3 Process for Acceptance of Deliverable(s) 54
2.8.4 Acceptance of Deliverable(s) 54
2.8.5 Process for Approval of Written Deliverable(s) [Deleted, Not Applicable] 54

2.8.6 Process for Approval of Services [Deleted, Not Applicable] 54
2.8.7 Final Acceptance 54

2.9 Ownership [Deleted, Not Applicable] 54

2.10 State Standards [Deleted, Not Applicable] 54

2.11 Confidentiality 54
2.11.1 Confidential Information 54
2.11.2 Protection and Destruction of Confidential Information 55
2.11.3 Exclusions 55
2.11.4 No Obligation to Disclose 55
2.11.5 Security Breach Notification 55

2.12 Records and Inspections 55
2.12.1 Inspection of Work Performed 55
2.12.2 Retention of Records 56
2.12.3 Examination of Records 56
2.12.4 Audit Resolution 56
2.12.5 Errors 56

2.13 Warranties 57
2.13.1 Warranties and Representations 57
2.13.2 Warranty of Merchantability 57
2.13.3 Warranty of Fitness for a Particular Purpose 58
2.13.4 Warranty of Title 58
2.13.5 Equipment Warranty 58
2.13.6 New Deliverable(s) 58
2.13.7 Prohibited Products 58
2.13.8 Consequences For Breach 58

2.14 Insurance 58
2.14.1 Liability Insurance 58
2.14.2 Subcontractor Insurance Coverage 60
2.14.3 Certificates of Insurance and Other Requirements 61

2.15 Indemnification 61
2.15.1 General Indemnification 61
2.15.2 Code Indemnification 61
2.15.3 Employee Indemnification 61
2.15.4 Patent/Copyright Infringement Indemnification 61
2.15.5 Continuing Obligation 62
2.15.6 Indemnification Procedures 62
2.15.7 Limitation of Liability 62

2.16 Termination by the State 63
2.16.1 Notice and Right to Cure 63
2.16.2 Termination for Cause 63
2.16.3 Termination for Convenience 63
2.16.4 Termination for Non-Appropriation 63
2.16.5 Termination for Criminal Conviction 64
2.16.6 Termination for Approvals Rescinded 64
2.16.7 Rights and Obligations upon Termination 64
2.16.8 Reservation of Rights 64
2.16.9 Contractor Transition Responsibilities 65
2.16.10 Transition Payments 65

2.17 Termination by the Contractor 65
2.17.1 Termination 65

2.18 Stop Work 65
2.18.1 Stop Work Order 65
2.18.2 Termination of Stop Work Order 65

2.18.3 Allowance of the Contractor's Costs 65

2.19 Reserved 66

2.20 Dispute Resolution 66
2.20.1 General 66
2.20.2 Informal Dispute Resolution 66
2.20.3 Injunctive Relief 66
2.20.4 Continued Performance 66

2.21 Disclosure Responsibilities 66
2.21.1 Disclosure of Litigation 66
2.21.2 Other Disclosures 67
2.21.3 Call Center Disclosure 67

2.22 Extended Purchasing 67
2.22.1 MiDEAL Requirements 67
2.22.2 State Administrative Fee 67
2.22.3 State Employee Purchase Requirements 67

2.23 Laws 67
2.23.1 Governing Law 67
2.23.2 Compliance with Laws 68
2.23.3 Jurisdiction 68
2.23.4 Nondiscrimination 68
2.23.5 Unfair Labor Practices 68
2.23.6 Environmental Provision 68
2.23.7 Freedom of Information 69
2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable] 69

2.24 General Provisions 69
2.24.1 Bankruptcy and Insolvency 69
2.24.2 Media Releases 69
2.24.3 Contract Distribution 69
2.24.4 Permits 69
2.24.5 Website Incorporation 69
2.24.6 Future Bidding Preclusion 69
2.24.7 Antitrust Assignment 69
2.24.8 Disaster Recovery 70
2.24.9 Legal Effect 70
2.24.10 Entire Agreement 70
2.24.11 Order of Precedence 70
2.24.12 Headings 70
2.24.13 Form, Function and Utility 70
2.24.14 Reformation and Severability 70
2.24.15 Approval 70
2.24.16 No Waiver of Default 70
2.24.17 Survival 70

Appendices

Appendix A – Pricing Schedule
Appendix B - Specification Information for Patrol, Passenger Vehicles and Trucks
Appendix C - Affidavit for Driver Delivery
Appendix D - Federally Required Contract Clauses (Rolling Stock)
Appendix E – ARRA Terms and Conditions

Definitions

This section provides definitions for terms used throughout this document.

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 through 5:00pm Eastern Time unless otherwise stated.

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

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the DTMB-Purchasing Operations Director, and the State Administrative Board.

Contractor – the awarded bidder after the Effective Date.

Days - Business Days unless otherwise specified.

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

Deliverable(s) - physical goods or commodities as required or identified in a Statement of Work.

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

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 that requests full or partial performance of the Contract.

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 or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the 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

1.1 Project Identification

The State of Michigan, Department of Technology Management and Budget, Purchasing Operations, has established a list of pre-qualified automotive dealers to provide a variety of vehicles for the Michigan Department of Transportation (MDOT), authorized transit agencies and MiDEAL members. The vehicles which will be offered under State of Michigan contracts will include the following categories: patrol and passenger vehicles, trucks, vans, cab & chassis. This is not an all-inclusive list; therefore, other categories may be requested and/or eliminated.

Pre-qualification does not guarantee any specific vehicles, quantities, or volume but rather pre-qualifies dealers to bid on various vehicle categories. 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.

1.1.1 Project Request

As a result of this contract, DTMB will have access to a pool of pre-qualified bidders available to provide vehicles to the State of Michigan and other authorized entities. The purpose of the dealer pre-qualification program is to create a mechanism in which a range of qualified dealers can bid on various vehicles in a short period of time, thus providing maximum value to MDOT, MIDEAL members and authorized transit agencies. This allows the State to offer the newest vehicles at the best prices, providing best value to MDOT, authorized transit agencies, and MIDEAL members.

Pre-qualified dealers will be invited to participate in quarterly bid cycles. Once a dealer is awarded a vehicle, the dealer is committed to provide the vehicle at that price for one model year with an option to "roll-over" the current model pricing for future model years.

1.1.2 Background

In the past, the State solicited bids for vehicles and established 3 year contracts with awarded dealers. This contracting process did not allow for the addition of new vehicles released in the marketplace and was an administrative burden to both the State and interested bidders. The pre-qualification process is intended to reduce administrative cost for dealers by simplifying the bid process and eliminating time used to prepare formal bid responses. Instead, dealers can focus on offering the most competitive prices on vehicles as they are released. This process also allows the State to add new vehicles as they are introduced instead of waiting for each contract cycle of 2-3 years.

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope

A. Dealer Pre-Qualification Program

The dealer's pre-qualification status is valid for the duration of this contract. However, the State reserves the right to remove any dealer from the pre-qualification program at anytime for any reason. Any issue of Contractor performance will be documented and discussed with the Contractor. The Contractor performance may affect any future awards and their status in the pre-qualified program. Performance by pre-qualified vendors will be continually evaluated by the State. Performance will be a factor in the award of any vehicles and continued poor performance will be grounds for no awards.
Poor performance may also be grounds for not exercising contract options. It is the State's intent to qualify dealers every 5-7 years. Any dealer who has not been pre-qualified in this cycle may become pre-qualified for future bid opportunities subject to DTMB, Purchasing Operations approval. It is the State's

intent to pre-qualify a maximum of 30 dealers, 10 dealers per each domestic manufacturer (Chrysler, Ford, and GM).

B. Vehicle Specifications

The vehicle specifications represent categories of vehicle sizes, including patrol and passenger cars, wagons, vans, pick-up trucks, various body and chassis combinations, heavy duty truck chassis, and alternate fuel vehicles. This contract contains specifications, terms and conditions for ALL MDOT, MiDEAL, and Patrol vehicles, therefore dealers are only issued (1) one contract.

The Department of Technology, Management and Budget, Purchasing Operations with the cooperation of MDOT and the vehicle manufactures will conduct a specification meeting in August of 2010. Pre-qualified dealers and their sub-contractors will also be invited to participate. Specifications will be finalized, published, and advertised on the website in September of 2010, along with a pricing spreadsheet that contains over 102 different vehicle configurations. It is the State's intent to only modify these specifications as the State's options change. All vehicle specific information will be indicated on the pricing spreadsheet. All pre-qualified dealers shall adhere to these vehicle specifications when submitting their quarterly bids.

C. Quarterly Vehicle Bids

Among the pre-qualified list of dealers, vehicle pricing bids are conducted every quarter. Dealers who are not pre-qualified will **not** be allowed to participate in any quarterly bid cycles. Pricing bids will be released at the beginning of each quarter on the Bid4Michigan.com website. Purchasing Operations is no longer notifying bidders by any other method. The State of Michigan will not notify dealers when bids are released on the website. It is the dealer's responsibility to access these quarterly bids from the website. Pricing bid responses and all corresponding attachments shall only be submitted in an electronic format unless otherwise specified per the instructions on the Bid4Michigan.com website.

For each quarter, the manufacturers will provide the vehicles scheduled for bidding in the upcoming quarter. The first quarterly bid cycle will be released in September 2010, which will contain all available pricing for 2011 models at that time. Total bids will vary because dealerships will be able to offer bids on an item-by-item basis for the 102 items. Dealers will have the option of bidding on vehicles for MDOT with delivery terms specified as F.O.B. Delivered or for MiDEAL with delivery terms specified as F.O.B. Destination. The delivery fee per vehicle for MiDEAL members shall be a maximum of $2.00 per mile starting at the first mile. Dealers can include a lower delivery fee than $2.00 per mile in their bid responses.

All pre-qualified dealers who participate in the quarterly bid cycles will be afforded an opportunity to validate the accuracy of their bid, and to withdraw their offerings on an item-by-item basis. However, if the dealer chooses to withdraw their bid, the State reserves the right to cash the dealer's bid deposit. If the State chooses to cash the dealer's check, an additional $1,000 check is required from the dealer in order to continue participation in the Pre-Qualification program.

Vehicle Order Confirmation Sheets

Dealers must also submit vehicle order confirmation sheets for EACH vehicle bid. Vehicle order confirmation sheets shall be submitted in an electronic format via the Bid4Michigan.com website along with the dealer's pricing submittal.

D. Vehicle Awards

In an attempt to offer a broader range of service to MDOT and MiDeal members, the State plans to make awards to all manufacturers in each category of specification. Awards will be based on meeting specifications and the lowest price for each manufacturer, make, and model. However, the State reserves the right to award by group of model (i.e. all F-150's) and/or category (Lt. Duty Trucks) to one dealer. Awards may be based on the lowest bid for the highest number of specification numbers and/or the State's usage of those models.

Vehicle awards will be published in a spreadsheet format (Appendix A) as a change notice to the awarded pre-qualified dealer's contract.

Once a dealer is awarded a vehicle, prices are fixed for one model year with an option of "roll-over" pricing for additional model years. Model year is defined as the current model year at the time of the bid release. Dealers are obligated to provide the vehicle at the bid price as long as that model year is produced. "Roll-over" pricing shall be upon mutual agreement between the State and the dealer. The State reserves the right to not "roll-over" pricing and add the vehicle to the upcoming quarterly bid cycle. When that model year is up, the upcoming model year will be included on the next quarterly bid as pricing becomes available and all pre-qualified dealers can submit pricing on that new model year.

1.2.2 Deliverable(s)

The contractor must provide the following Deliverable(s):

A. Model Years

Vehicle awards resulting from this contract will be for the 2011, 2012, 2013, 2014, and 2015 model years, with two additional renewal options which will include 2016 and 2017 model years.

B. Definite Specifications

All vehicles to be furnished hereunder shall conform to the attached specifications as indicated in the pricing spreadsheet (Appendix A) and in the Specification Book (Appendix B). If equipment does not fully comply with specifications, dealers shall include a list of designated exceptions to specifications. When no statement of exception is indicated, conformance to specifications will be required. Exceptions must be registered with the item number(s) to which it applies and list the description of equipment involved. This information must be submitted electronically with the bid submittal via Bid4Michigan.com. The State reserves the right to accept or reject exceptions to the specification.

C. New Equipment

All vehicles must be new and of the manufacturer's current models in production at the time of order. All standard or optional equipment to be included shall be as advertised by the manufacturer (OEM) and factory installed and shall not consist of substitute or after market equipment. Equipment not available from the factory may be dealer installed, in compliance with specifications.

D. Options

Factory Equipment not specifically listed in the Specification Book may be added in accordance with the current Kelley Blue Book in effect at the time of order, using the Invoice Column. This information can be located on www.kbb.com under the "Price With Options" selection once a model is selected. See screenshot below for reference. MDOT, MiDeal members, and authorized transit agencies may add options on a direct basis with the contractor. For authorized transit agencies, any questions about options need to be answered by the Project Manager of the transit agency purchasing the vehicles.

Kelly Blue Book Website (*www.kbb.com*)

MiDEAL members shall refer to the "Invoice" Column for pricing when adding options to contract vehicles.

PRICE WITH OPTIONS

New Car Blue Book Value	Invoice	MSRP
WHAT'S THIS?	WHAT'S THIS?	WHAT'S THIS?
(price will update) 24,730.00	23,773.80	24,730.00

MX0	**Automatic, 4-Spd w/Overdrive**	N/C	N/C
ACCESSORY PACKAGES			
VQG	**Weather Protection Pkg,** (Installed by Dealer) *(Limited Availability) (N/A w/FDR Order Type)* ***Includes*** *Cargo Tray, All-Weather Floor Mats & Molded Mud Guards.*	356.40	405.00
OTHER OPTIONS			
UPF	**Bluetooth Wireless Connectivity** • LS *(Std LT Retail & LTZ) (Req's Communication System-UE1)* ***Includes*** *Steering Wheel Touch Controls & Leather-Wrapped Steering Wheel.*	215.60	245.00
VK3	**Bracket,** Front License Plate	13.20	15.00
W2D	**Cargo Net,** (Installed by Dealer) *(Limited Availability) (N/A w/FDR Order Type)*	48.40	55.00

E. Bid Deposit

The State of Michigan requires a Cashier's check in the amount of $1,000.00 in order to participate in the dealer pre-qualification program. Checks are held by the State and only cashed if a dealer defaults on a bid submission. However, during the contract period, if a pre-qualified dealer wishes to be removed from the pre-qualification list, their check will be returned to them and their contract will be canceled. Otherwise, all checks will be returned to the contractor after contract expiration.

1.2.3 Quantity

The State is not obligated to purchase in any specific quantity.

1.2.4 Ordering

The dealer shall have a dedicated phone and fax line for sending and receiving quotes and orders, as this will be an essential function of the dealer's customer service. Dealers shall have the capability to receive orders by e-mail, facsimile, and by written order. The Dedicated Phone and fax Line for State of MI contract inquiries is listed on the cover page of this contract agreement.

Orders for delivery of commodities and/or services will be issued directly by MDOT, MiDEAL members, and authorized transit agencies, through the issuance of a Purchase Order Form referencing this contract. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

1.2.5 Alternate Bids

Reserved.

1.3 Management and Staffing

1.3.1 Project Management

Reserved.

1.3.2 Reports

Reserved.

1.3.3 Staff, Duties, and Responsibilities

The Contractor shall have an individual (key personnel) specifically assigned to State of Michigan contracts. Please note that the key personnel assigned to the contract as listed above will be required to provide customer service and sales support on a daily basis to MDOT, MiDeal members, and authorized transit agencies. It is important to note that key personnel will be working one-on-one with each customer, explaining the vehicle program, walking them through the offerings, and assisting them in providing a vehicle that meets their needs within this contract. Key personnel must respond to customer inquiries promptly. The dealers shall have internal controls, approved by Purchasing Operations, to insure that only authorized individuals place orders.

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

1.3.4 Meetings

The State may request a kick-off meeting with the contractor within thirty (30) days of the Effective Date. The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance

All pre-qualified dealers are located in Michigan. There is no service included on this contract.

1.3.6 Subcontractors

Information regarding sub-contractors included on this contract can be located in the contractor's response in the bid file.

1.3.7 Binding Commitments

Reserved.

1.3.8 Training

The dealer must provide access for MDOT mechanics to all on-line service and repair information including service bulletins for all vehicles purchased. The dealer shall provide access for MDOT mechanics to service and repair training for the models purchased. Training shall be similar to the training offered to dealership mechanics.

1.3.9 Security

The contractor may be required to make frequent deliveries to State facilities. The contractor must ensure security and safety of these facilities, including, but not limited to, performance of background checks on its personnel. If background checks are performed, the contractor must provide a document stating that its personnel have satisfactorily completed a background check and are suitable for State work.

The State may issue State ID badges to the contractor's delivery personnel or accept the ID badge issued to delivery personnel by the contractor. The State may decide to perform an additional background check under Section 2.4.9, Background Checks. If so, the contractor must provide a list of all personnel, including name and date of birth, that will be assigned to State work.

1.4 Delivery and Acceptance

1.4.1 Time Frames

Delivery shall be within:

- 90-120 calendar days after receipt of the order for patrol, passenger vehicles, Light Trucks, Vans, and Cab & Chassis without body equipment

- 120-240 calendar days after receipt of order for Cab & Chassis equipped with Dump, Stake, or Van Type Bodies

Alternate schedules may be mutually agreed upon in writing by the contractor and the ordering agency. Exact Delivery Due Date will be determined by the delivery schedule, plus (+) seven (7) calendar days from the order date indicated on the Departmental Contract Release/Purchase Order.

The following is the listing of State of Michigan, agency Ship To, Bill To, and Title To information. The listing shall not limit participation of additional agencies as the need may develop, at the same prices, terms, and conditions.

MICHIGAN DEPARTMENT OF TRANSPORTATION:

Ship To:	Michigan Department of Transportation Office of Operations Administrative Services Fleet Administration and Operations 2522 W. Main St. Lansing, MI 48917 Telephone No. (517) 334-7758
Bill To:	Michigan Department of Transportation Office of Operations Administrative Services Fleet Administration and Operations 2522 W. Main St. Lansing, MI 48917

Title To: State of Michigan
Michigan Department of Transportation
2522 W. Main St.
Lansing, MI 48917
Telephone No. (517) 334-7758

1.4.2 Minimum Order

It is required that the minimum order shall be one (1) unit.

1.4.3 Packaging

Reserved.

1.4.4 Palletizing

Reserved.

1.4.5 Delivery Term

A. F.O.B. DELIVERED ITEMS

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders for the Michigan Department of Transportation (MDOT) for delivery to the State of Michigan, Department of Transportation, Maintenance A & E Garages in the vicinity of Lansing, Michigan. Other F.O.B. terms will not be accepted and shall disqualify a dealer from further consideration.

B. F.O.B. DEALERSHIP ITEMS

Prices shall be quoted "F.O.B. Dealership" with transportation charges prepaid to the primary contractor location on all orders for MiDEAL and authorized transit agencies. Dealers must also quote a delivery cost per mile to facilitate calculation of delivery cost to various locations within the State of Michigan. The delivery fee per vehicle for MiDEAL members shall be a maximum of $2.00 per mile starting at the first mile. Dealers can include a lower delivery fee than $2.00 per mile in their bid responses. The delivery cost per mile will be added to the unit cost of the vehicle unit price quoted to determine the "Total Unit Price" for "F.O.B. Dealership" items. Mileage will be calculated based upon the "Official Michigan Department of Transportation Highway Map". Other F.O.B. terms will not be accepted and shall disqualify a dealer from further consideration.

C. DRIVER DELIVERY

Contractors will be permitted to drive vehicles to final destinations in compliance with the "Affidavit for Driver Delivery" attached, however, the affidavit must be completed, submitted, and in the contract file within Purchasing Operations to be applicable.

Delivery must be made between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday ONLY, excluding State Holidays. Contractors must contact the ordering agency 48 hours prior to scheduled delivery time and date, to obtain confirmation of staff availability.

1.4.6 Acceptance Process

Prior to delivery, each vehicle shall be serviced and inspected by the dealer or his agent. At a minimum, this pre-delivery service and inspection shall cover the specifications listed in the State of Michigan Specifications. A copy of the contractor's inspection and service check, including the contractors and vehicle identification, check off of service and inspection performed and the service manager's signature shall be furnished with each vehicle delivered. The vehicles crank case, differential and transmission shall be filled to the manufacturer's recommended capacity and the fuel tank shall have a minimum of one-fourth of a tank of fuel when the vehicle arrives at the delivery destination. The contractor shall provide a completed odometer statement, completed RD108 application for title form, vehicle window sticker or line setting ticket, and invoice for each vehicle at the time of delivery. The vehicle shall be clean and free from defects when delivered.

Each unit shall have an initial fill of windshield washer solution with solvent giving winter protection.

The receiving Departments have been instructed to make immediate inspection on receipt of units and to process payment documents promptly. Payment documents, however, will be delayed if the vehicle fails to comply with specification requirements. Therefore, we wish to impress on contract dealers that close pre-delivery inspection in accordance with specifications be made.

1.4.7 Criteria

Reserved.

1.5 Proposal Pricing

1.5.1 Pricing

Once a dealer is awarded a vehicle, prices are fixed for one model year with an option of "roll-over" pricing for additional model years. Model year is defined as the current model year at the time of the bid release. Dealers are obligated to provide the vehicle at the bid price as long as that model year is produced. "Roll-over" pricing shall be upon mutual agreement between the State and the dealer. The State reserves the right to not "roll-over" pricing and add the vehicle to the upcoming quarterly bid cycle. When that model year is up, the upcoming model year will be included on the next quarterly bid as pricing becomes available and all pre-qualified dealers can submit pricing on that new model year.

STATE ADMINISTRATIVE FEE

The Contractor must collect an Administrative Fee on the sales transacted under the contract for MiDEAL members and authorized transit agencies, not orders from Michigan Department of Transportation. The 1% Administrative Fee shall be based upon the contract unit cost, without consideration of the addition of optional equipment. The Contractor must remit the Administrative Fee in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The Contractor must include the Administrative Fee in their bid prices for "F.O.B. Dealership" items.

The Contractor must pay the Administrative Fee collected by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment:

An itemized quarterly reports, each line shall state the BPO (Contract Number), name of the local unit of government which made a purchase, the item number purchased, the unit cost of the item purchased, the quantity purchased, the sales amount subject to the administrative fee, and the amount of the 1% administrative fee due the State of Michigan.

1.5.2 Quick Payment Terms

The contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the contractor's financial institution.

The Contractor must check one box below:

[___] The contractor will offer a quick payment discount of _____% off an invoice if paid within _____# of Days from the State's receipt of the invoice or delivery of the Deliverable(s), whichever is later.

[___] No quick payment discount will be offered.

1.5.3 Price Term

Prices quoted are the maximum to be charged during the vehicle model year. Model year is defined as the current model year at the time of the bid release. Dealers are obligated to provide the vehicle at the bid price as long as that model year is produced with the following exceptions; the state shall receive the benefit of any decrease in price that may occur, if changes in manufacturer standard equipment or federal regulations affect the cost of the vehicles required during the model year by more than fifty-dollars ($50), the contractor may request a price revision to reflect the actual cost increase experienced. The request must be accompanied by evidence that the change actually affected the contractor's cost.

If the State of Michigan raises the cost of the vehicle title fees during the contract period, contractors may request a price adjustment to reflect the actual cost increase experienced.

Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the model year, and shall take effect 30 days after authorization of the revision by Purchasing Operations. The postmark date on the Contract Release/Purchase Order shall determine prices to be charged on order that may have been in transit prior to implementation of price revisions.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST 30 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the vehicle will be added to the upcoming quarterly bid cycle making it available for all pre-qualified dealers to submit bids. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

1.5.4 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-Purchasing Operations 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, the contractor's prices must not include the Federal Excise Tax.

1.5.5 Invoices

The contractor shall submit two (2) copies of invoices, one (1) to the "Bill To" address and one (1) the "Ship To" address.

1.5.6 Title Fees

Prices shall include the cost of title fees for each vehicle.

If the State of Michigan modifies the cost of vehicle titles during the model year, either the state or the contractor may request a price adjustment to reflect the actual change.

1.5.7 Late Payment Terms

The maximum payment of "Vendor Late Payment Charges" will be approved if the deliveries are within the specified time and if the vehicles satisfactorily comply with the inspections requirements of this contract in accordance with Public Act 279 of 1984. If a contractor proposes "Vendor Late Payment Charges" that exceed those established within Public Act 279, the charges will not be accepted.

1.5.8 Manufacturer's Rebates (Incentives)

In any circumstance during or prior to completion of the contract, whereupon the State of Michigan, MiDEAL member and/or authorized transit agency (customer) becomes eligible to receive a rebate for any vehicle purchased under the contract, it shall be the prime contractors responsibility to inform the State of Michigan, MiDEAL member, and/or authorized transit agency, in writing, of its qualification for such rebate and to advise the procedures of obtaining such rebates.

1.5.9 Quantity term

The contractor agrees to supply all that the Michigan Department of Transportation, MiDEAL members and/or Authorized transit agency require.

1.6 Commodity Requirements

1.6.1 Customer Service

Please refer to Articles 1.2.4 Ordering and 1.3.3. Staff, Duties, and Responsibilities.

1.6.2 Research and Development

Reserved.

1.6.3 Quality Assurance Program

Reserved.

1.6.4 Warranty for Deliverable(s)

All vehicles purchased on this contract will be covered at a minimum by the same manufacturer's vehicle warranty as is provided to retail customers. The contractor will be responsible for all materials and accessories used in the vehicle, whether the same is ready made or from an outside source; and this responsibility may not be transferred, conveyed, assigned to any other person, company, corporation or entity without the previous written approval of the State.

Extension of warranty and or other policy adjustments will be considered when constant maintenance is required or if replacement parts prove unsound. The State of Michigan shall expect the manufacturer to have an adequate stock of replacement parts available to service State of Michigan, MiDEAL members and authorized transit agencies vehicles and to make delivery of all replacement parts to their dealers who may service State of Michigan, MiDEAL members and authorized transit agencies vehicles, within a

reasonable time. The prime contractor will be required to contact the State of Michigan, MiDEAL members and authorized transit agencies within ten (10) days after receipt of a contract release or purchase order, to arrange procedures concerning the implementation of warranty claims and to designate personnel to handle claims.

The State further expects that warranty service and repairs as well as non-warranty service and repairs will be handled without prejudice.

1.6.5 Special Incentives

Reserved.

1.6.6 Energy Efficiency

The State is interested in offering fuel efficient vehicles on this contract. Dealers shall indicate the fuel efficiency of applicable vehicles by providing the Miles per Gallon (MPG) data on the pricing spreadsheet (Appendix A). This data can be used by agencies when selecting a vehicle to purchase.

1.6.7 Environmental Requirements

The State prefers to purchase products that impact the environment less than competing products. 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 shall be able to provide information on the topics described above if requested.

1.6.8 Recycled Content and Recyclability

(a) **Deliverable(s)**. Without compromising performance or quality, the State is interested in vehicles containing higher percentages of recycled materials. The contractor shall be able to provide information upon request on the percentage of recycled materials, if any, contained in each vehicle.

(b) **Packaging**. The State prefers packaging materials that:

(i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
(ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;
(iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
(iv) provide for a return program where packaging can be returned to a specific location for recycling; and
(v) contain materials that are easily recyclable in Michigan.

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification**. The contractor shall be able to provide a list upon request of 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.

(b) **Mercury Content**. Under MCL 18.1261d, the contractor must offer mercury-free products whenever possible. Upon request, the contractor must be able to provide a list of 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.

(c) **Brominated Flame Retardants**. The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The contractor must be able to provide a list of products that contain BFRs.

(d) **Environmental Permits and Requirements**. 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.

1.7 Extended Purchasing

1.7.1 MiDEAL and Authorized Transit Agencies

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. In addition, MDOT, Bureau of Passenger Transportation has provided a list of transit agencies that are authorized to purchase vehicles off this contract due to the receipt of grants. The list of authorized agencies can also be located on www.michigan.gov/mideal.

The contractor must supply vehicles to the State, MiDEAL Members, and authorized transit agencies at the established State Contract prices and terms, subject to Section 2.22.1, MiDEAL Requirements.

1.7.2 State Employee Purchases

Reserved.

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins October 1, 2010 and expires September 30, 2015 All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, 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 term will remain in effect until the next September 30.

2.2.2 Options to Renew

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

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all vehicles for one model year with an option to “roll-over” for additional model years.

2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within forty-five (45) days after receipt.

2.2.3 Invoicing and Payment – In General

Reserved.

2.2.4 Pro-ration

Reserved.

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

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

2.2.7 Employment Taxes

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

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the 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 (a) 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 (b) 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.

2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Purchasing Operations on behalf of Michigan Department of Transportation (MDOT) (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:

Irene Pena
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Penai1@michigan.gov
517-241-1647

2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Dan Smith
Office of Operations Administrative Services
MDOT
2522 West Main St.
Lansing , Mi. 48917
Phone 517-334-7767
Fax 517-334-7840
Cell 517-719-6802

2.3.3 Project Manager

Reserved.

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Purchasing Operations will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

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

2.3.5 Price Changes

Reserved.

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Purchasing Operations
Attention: Irene Pena
PO Box 30026
530 West Allegan
Lansing, MI 48909
Penai1@michigan.gov
517-335-0046

If to Contractor:
Please refer to the contract cover page for contact information.

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least ninety (90) days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.3.9 Equipment

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

2.3.10 Facilities

Reserved.

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

2.4.2 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel.

(b) The Contractor must dedicate Key Personnel to perform work for the duration of the Contract as provided in Section 1.3.3, Staff, Duties, and Responsibilities.

(c) Before assigning a new individual to any Key Personnel position, the Contractor must notify the State of the proposed assignment, introduce the individual to the appropriate State representatives, and provide the State with a resume and any other reasonably requested information. The State must approve or disapprove the assignment, reassignment, or replacement of any Key Personnel. The State may interview the individual before making its decision. If the State disapproves an individual, the State will provide a written explanation outlining the reasons for the rejection.

(d) The Contractor may not remove any Key Personnel from their assigned roles without the prior consent of the State. The Contractor's removal of Key Personnel without the prior consent of the State constitutes Unauthorized Removal. Unauthorized Removal does not include replacing Key Personnel for reasons beyond the Contractor's reasonable control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. Unauthorized Removal does not include replacing Key Personnel because of promotions or other job movements allowed by the Contractor's personnel policies or Collective Bargaining Agreement(s), as long as the Contractor assigns the proposed replacement to train the outgoing Key Personnel for 30 days. Any Unauthorized Removal will be considered a material breach of the Contract.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 Days before redeploying non-Key Personnel to other projects.

2.4.3 Removal or Reassignment of Personnel at the State's Request

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

2.4.4 Contractor Personnel Location

Reserved.

2.4.5 Contractor Identification

The Contractor's employees must be clearly identifiable while on State property by wearing a State-issued badge, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

2.4.7 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

2.4.8 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.4.9 Background Checks

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.4.10 Compliance With State Policies

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at http://www.michigan.gov/pcpolicy. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.5.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Purchasing Operations gives prior approval to the delegation. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

2.5.3 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

2.5.4 Competitive Selection

Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.6 Reserved

2.7 Performance

2.7.1 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.

2.7.2 Service Level Agreements

Reserved.

2.7.3 Liquidated Damages

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

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

C. Liquidated damages will be assessed as follows:

If the contractor does not deliver the vehicle/s, ready for use on or before the scheduled delivery date, the contractor shall pay to the State and/or Local Unit of Government, as fixed and agreed, liquidated damages, for each calendar day between the delivery date specified and the date of final delivery, but not

more than 30 calendar days in lieu of all other damages due to such non-delivery, an amount of 2/10th of 1% of the Purchase Order/Departmental Contract Release Form unit cost per vehicle.

If some, but not all, of the vehicle/s described in the Purchase Order/Departmental Contract Release Form are delivered ready for use, by the scheduled delivery date, liquidated damages shall not accrue against the vehicle/s delivered.

If the delay is more than thirty 30 calendar days, then by written notice to the Contractor, the State and/or Local Unit of Government may terminate the right of the contractor to deliver, and may obtain substitute vehicle/s. In this event, the Contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute vehicle/s are delivered, ready for use, or for 30 days from the scheduled delivery date, whichever occurs first.

2.7.4 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

2.8 Acceptance of Deliverable(s)

2.8.1 Quality Assurance

Reserved.

2.8.2 Delivery Responsibilities

Reserved.

2.8.3 Process for Acceptance of Deliverable(s)

A. Principle Period of Maintenance (PPM) will be the same hours as the State's normal working hours (currently Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding a one (1) hour lunch period, excepting State observed holidays).

B. The PPM hours may be changed upon thirty (30) days written notice by mutual agreement, except the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.

The contractor will proceed expeditiously to complete the repair of any defect or failure reported by the State in the shortest practicable time except that it shall not exceed five (5) State working days following notice of defect unless agency and contractor mutually agree on alternate repair arrangements. Such alternate arrangements shall be made within five (5) State working days of defect notice. If the Contractor fails to repair the equipment within five (5) State working days, the State shall have as its option the right to obtain the required repair from other sources, or to complete the work itself and hold the contractor liable for any cost incurred. The State as it option for amounts due may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

If the Contractor fails to remit amounts due, these claims shall be subject to the standard State of Michigan Collection Claim Procedures by the State Treasury Department, in addition failure to remit amounts due may be considered cause for a contractor to be considered in default.

2.8.4 Acceptance of Deliverable(s)

Reserved.

2.8.5 Process for Approval of Written Deliverable(s) [Deleted, Not Applicable]

2.8.6 Process for Approval of Services [Deleted, Not Applicable]

2.8.7 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

2.9 Ownership [Deleted, Not Applicable]

2.10 State Standards [Deleted, Not Applicable]

2.11 Confidentiality

2.11.1 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

(a) disclosable under the Michigan Freedom Of Information Act (FOIA);
(b) now available or becomes available to the public without breach of this Contract;
(c) released in writing by the disclosing party;
(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
(e) publicly disclosed pursuant to federal or state law; or
(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

Some MiDEAL members and/or authorized transit agencies may be using Federal grants to purchase vehicles from this contract. The contractor may be required to provide evidence of compliance to the Federal Transportation Administration’s (FTA) 49 DFR Part 663 for Pre-Order and Post Delivery Audits of Rolling Stock Purchases.

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

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

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

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

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

2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven (7) years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.12.3 Examination of Records

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of Contractor, or any Subcontractor that performs services in connection with this Contract.

2.12.4 Audit Resolution

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

2.12.5 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four (4) invoices or beyond the termination of the Contract. If a balance remains after four (4) invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two (2) days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other contractor for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other contractor before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Purchasing Operations if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

2.13.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

2.13.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

2.13.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

2.13.5 Equipment Warranty

(a) The Contractor represents and warrants that the equipment/system(s) are in good operating condition and perform to the requirements contained in this Contract at the time of Final Acceptance, and for a period of one year following Final Acceptance.

(b) To the extent the Contractor is responsible for maintaining equipment/system(s), the 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.

(c) The Contractor must provide a toll-free telephone number for the State to report equipment failures and problems.

(d) Within 30 Days of notification, 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.

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

(f) The Contractor is the sole point of contact for warranty service.

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new Unless specified in Article 1, Statement of Work, equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other.

2.13.7 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Purchasing Operations has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

2.14.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) 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. The minimum limits of coverage specified are not

intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
(iv) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(b) The Contractor must:
(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise 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.
(ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
(iii) ensure that 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.
(iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII 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.
(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three (3) years following the termination of this Contract.
(vi) pay all deductibles.
(vii) pay for and provide the type and amount of insurance checked ☑ below:

☑ **(A) Commercial General Liability Insurance**

Minimal Limits:

$2,000,000 General Aggregate Limit other than Products/Completed Operations;
$2,000,000 Products/Completed Operations Aggregate Limit;
$1,000,000 Personal & Advertising Injury Limit; and
$1,000,000 Each Occurrence Limit.

Deductable maximum:

$50,000 Each Occurrence

Additional Requirements:

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.

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(C) Motor Vehicle Insurance**

Minimal Limits:

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.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

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 must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage 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.

Additional Requirements:

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.

☑ **(F) Employers Liability Insurance**

Minimal Limits:

$100,000 Each Accident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

2.14.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's

insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.14.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Purchasing Operations with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Purchasing Operations. The notice to the Director of DTMB-Purchasing Operations must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 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 tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.15.2 Code Indemnification

Reserved.

2.15.3 Employee Indemnification

In any claims against the State, its departments, agencies, 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.

2.15.4 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.

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, 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.

2.15.6 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 notification 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, including attorney fees, 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.

2.15.7 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 attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

2.16 Termination by the State

2.16.1 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.

2.16.2 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 Deliverable(s) that are terminated. The State must pay for all Deliverable(s) 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 2.16.3, 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.

2.16.3 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 for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP 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 Deliverable(s) that are terminated.

2.16.4 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-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 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.

2.16.6 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-progress 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.

2.16.7 Rights and Obligations upon Termination

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

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

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

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

(iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) 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);

(v) 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; and

(vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) 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 Deliverable(s). 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 Deliverable(s) 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 Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.16.8 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.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, 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 must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. 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 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.17 Termination by the Contractor

2.17.1 Termination

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

2.18 Stop Work

2.18.1 Stop Work Order

The State may, by issuing a 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 Section 2.16, Termination by the State.

2.18.2 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 the Contractor's costs properly allocated 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 by submission of a request for adjustment to the State; provided that, the State may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

2.18.3 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 Section 2.16, 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 2.18, Stop Work.

2.19 Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, 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.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, 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 recommendation regarding settlement of the claim. The Contractor must notify DTMB-Purchasing Operations within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Purchasing Operations is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit 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 2.20.3, Injunctive Relief.

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

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, 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.

2.20.4 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 Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

(i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;

(ii) A parole or probation Proceeding;
(iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

The Contractor must notify DTMB-Purchasing Operations within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

2.21.3 Call Center Disclosure

Reserved.

2.22 Extended Purchasing

2.22.1 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 Deliverable(s) under this Contract, the quantities of Deliverable(s) 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.

2.22.2 State Administrative Fee

Please refer to Article 1.51.

2.22.3 State Employee Purchase Requirements

Reserved.

2.23 Laws

2.23.1 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.

2.23.2 Compliance with Laws

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

2.23.3 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.

2.23.4 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 Elliott-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.

2.23.5 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.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include 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: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) 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.

2.23.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq*.

2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable]

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

(a) the Contractor files for bankruptcy protection;

(b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;

(c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;

(d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.24.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

DTMB-Purchasing Operations retains the sole right of Contract distribution to all State agencies, MiDEAL members and authorized transit agencies unless other arrangements are authorized by DTMB-Purchasing Operations.

2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

2.24.5 Website Incorporation

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

2.24.6 Future Bidding Preclusion

Reserved.

2.24.7 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The Contractor must not begin performance of the Contract until the Contractor receives a request under Section 1.2.4, 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 1.2.4, Ordering.

2.24.10 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.24.11 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:

(a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);

(b) The most recent Statement of Work related to this Contract;

(c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);

(d) Any attachment or exhibit to the Contract documents;

(e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and

(f) Bidder Responses contained in any of the RFP documents.

2.24.12 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.24.13 Form, Function and Utility

If this Contract is for statewide 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.

2.24.14 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

2.24.15 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

2.24.16 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.24.17 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

Appendix A

Please refer to the Excel Pricing Spreadsheet attachment.

Appendix B

Please refer to the Specification Book attachment.

Appendix C

AFFIDAVIT FOR DRIVER DELIVERY

Vehicles may be driven to the final delivery destination if the following conditions are met:

1. The drivers of the vehicles are correctly licensed and trained in proper vehicle operation.
2. The dealership accepts all responsibility and liability for vehicles in transit.
3. The requesting contractor must sign the affidavit below to be included in the contract file.

The contractor accepts all responsibility and liability for vehicles in transit and guarantees vehicles shall be transported in a safe, proper, and efficient manner.

I understand that the State may cancel approval of this affidavit at any time during the contract if the contractor fails to meet the above obligations.

_____ _____
Signed Dated

_____
Title

_____
Contractor

Appendix D

Federally Required Contract Clauses (Rolling Stock)

Article 6

SOLICITATION & AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5

Instructions:

This section must be used in all solicitations funded in whole or in part with American Reinvestment and Recovery Act (RECOVERY ACT) funds. If RECOVERY ACT funds are to be added to an existing contract, then this section must be incorporated.

6.000 **Definitions** 76
6.001 **Sub-Recipients Requirements** 76
6.010 **Reporting & Registration Requirements (Section 1512)** 76
6.020 **Buy American Requirement (Section 1605)** 76
6.030 **Prevailing Wages** 80
6.040 **Inspection & Audit of Records** 81
6.050 **Whistle Blower Protection for Recipients of Funds** 81
6.060 **Funding of Programs** 81
6.070 **Fixed Price- Competitively Bid** 81
6.080 **Segregation of Costs** 82
6.090 **Publication** 82
6.100 **Buy Michigan Preference** 82
6.110 **Non- Discrimination** 82
6.120 **Prohibition on Use of Funds** 82
6.130 **False Claims Act** 82
6.140 **Job Opportunity Posting Requirements** 82

6.000 Definitions

Definitions:

Recovery Act means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

6.001 Sub-Recipients Requirements

Contractor shall include these terms, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the Recovery Act.

6.010 Reporting & Registration Requirements (Section 1512)

On July 1, October, 1, January 1, and March 1, the Contractor shall provide the CCI with information required to be reported under Section 1512 of the Recovery Act and any other information reasonable requested by the CCI. Contractor shall report this information in the form and manner required by the CCI. The reporting requirement is a material obligation of the Contract. Contractor's failure to comply may be a material basis for termination under Section 2.150, Termination by the State.

6.020 Buy American Requirement (Section 1605)

Definitions as used in this section:

Designated Country means:

(1) For procurements by the State of Michigan:

(a) a World Trade Organization Government Procurement Agreement country: Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom; or

(b) a Free Trade Agreement (FTA) country: Australia, Chile, and Singapore.

(2) For procurements by the City of Detroit:

(a) a United States-European Communities Exchange of Letters country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom

Designated Country Good is iron, Steel, or a Manufactured Good (other than construction-grade steel, motor vehicles, and coal) that:

(1) is wholly the growth, product or manufacture of a Designated Country; or

(2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in a Designated Country into a new and different Manufactured Good distinct from the materials from which it was transformed.

Domestic Good is iron, Steel, or a Manufactured Good that:

(1) is wholly the growth, product or manufacture of the United States; or

(2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different Manufactured Good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in Manufactured Goods or products, as long as the manufacture of goods occurs in the United States.

Federal Agency means the department or agency of the federal government that awarded funds to the State of Michigan from the RECOVERY ACT which finances the project described in this RFP.

Foreign Good is iron, Steel, or a Manufactured Good that is not a Domestic or Designated Country Good.

Manufactured Good means a good brought to the construction site for incorporation into the building or work that has been--

(1) processed into a specific form and shape; or

(2) combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public Building and *Public Work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

I. <u>Required use of Domestic Goods</u>

a. Under section 1605 of the Recovery Act, only Domestic Goods will be used in the construction, alteration, maintenance, or repair of a Public Building or Public Work, unless an exception applies. This requirement does not apply to the Domestic Goods listed: None

b. A contractor requesting a determination regarding the inapplicability of section 1605 of the Recovery Act must submit the request to the Federal Agency with adequate time to allow a determination before the proposal due date. A contractor must provide a copy of this request to the DTMB Buyer. The Federal Agency is the sole entity authorized to make determinations regarding the inapplicability of section 1605 of the Recovery Act.

c. The Federal Agency may except other iron, Steel, or Manufactured Goods (other than construction-grade steel, motor vehicles, and coal) if it determines that:

(1) the cost of Domestic Goods would be unreasonable. The cost of Domestic Goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(2) the iron, Steel, or Manufactured Good (other than construction-grade steel, motor vehicles, and coal) is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) the application of section 1605 of the Recovery Act would be inconsistent with the public interest.

d. Regardless of any determination request, any contractor that requests to use non-Domestic Goods must include in its proposal:

(1) a description of the iron, Steel, or Manufactured Goods;
(2) unit of measure;
(3) quantity;
(4) cost;
(5) time of delivery or availability;
(6) location of the construction project;
(7) name and address of the proposed supplier; and
(8) a detailed justification of the reason for use of non-Domestic Goods.

e. If this contract includes the use of non-Domestic Goods, the contractor may submit an alternate proposal based on the use of equivalent Domestic Goods. If an alternate proposal is submitted, the contractor must submit a separate cost comparison table similar to the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.

f. A request based on the unreasonable cost of a Domestic Good must include a survey of suppliers and a completed cost comparison table listed below for each item. The contractor must list the name, address, telephone number, e-mail address, and contact person for each supplier surveyed. The contractor must also attach a copy of each supplier's response; if the response is oral, the contractor must attach a summary. The contractor may include other supporting information.

DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON

Description of Goods	Unit of measure	Quantity	Cost (dollars)*
Item 1: Domestic Goods..... non-Domestic Goods..... Item 2: Domestic Goods..... non-Domestic Goods.....			

**Include all delivery costs to the construction site.*

g. If the Federal Agency denies an exception requested under section 1605 of the Recovery Act, the State will evaluate only the contractor's proposal based on the use of Domestic Goods.

h. Any request under subsection (b) submitted after the contract award must explain why the contractor could not reasonably foresee the need for such determination and could not have requested the determination before the contract was awarded. If the contractor does not submit a satisfactory explanation, the Federal Agency does not need to make a determination.

i. If the Federal Agency determines after the contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies, and the agency and the contractor negotiate adequate consideration, the agency will modify the contract to allow use of the non-Domestic Goods. However, when the basis for the exception is the unreasonable cost of a Domestic Good, adequate consideration must not be less than the differential established in the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.

j. Section 1605 of the Recovery Act does not apply to equipment or tools which are not incorporated into the building or work.

II. Required Use of Domestic and Designated Country Goods

a. Under section 1605 of the Recovery Act, only Domestic or Designated Country Goods will be used in the construction, alteration, maintenance, or repair of a Public Building or Public Work, unless an exception applies. This requirement does not apply to the Domestic or Designated Country Goods listed: None

b. A contractor requesting a determination regarding the inapplicability of section 1605 of the Recovery Act must submit the request to the Federal Agency with adequate time to allow a determination before the proposal due date. A contractor must provide a copy of this request to the DTMB Buyer. The Federal Agency is the sole entity authorized to make determinations regarding the inapplicability of section 1605 of the Recovery Act.

c. The Federal Agency may except other iron, Steel, or Manufactured Goods (other than construction-grade steel, motor vehicles, and coal) if it determines that:

(1) the cost of Domestic or Designated Country Goods would be unreasonable. The cost of Domestic or Designated Country Goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(2) the iron, Steel, or Manufactured Good (other than construction-grade steel, motor vehicles, and coal) is not produced or manufactured in the United States or a Designated Country in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) the application of section 1605 of the Recovery Act would be inconsistent with the public interest.

d. Regardless of any determination request, any contractor that requests to use Foreign Goods must include in its proposal:

(1) a description of the iron, Steel, or Manufactured Goods;
(2) unit of measure;
(3) quantity;
(4) cost;
(5) time of delivery or availability;
(6) location of the construction project;
(7) name and address of the proposed supplier; and
(8) a detailed justification of the reason for use of Foreign Goods.

e. If the contractor's proposal includes the use of Foreign Goods, the contractor may submit an alternate proposal based on the use of equivalent Domestic or Designated Country Goods. If an alternate proposal is submitted, the contractor must submit a separate cost comparison table similar to the DOMESTIC/DESIGNATED COUNTRY AND FOREIGN GOODS COST COMPARISON table.

f. A request based on the unreasonable cost of a Domestic or Designated Country Good must include a survey of suppliers and a completed cost comparison table listed below for each item. The contractor must list the name, address, telephone number, e-mail address, and contact person for each supplier surveyed. The contractor must also attach a copy of each supplier's response; if the response is oral, the contractor must attach a summary. The contractor may include other supporting information.

DOMESTIC/DESIGNATED COUNTRY AND FOREIGN GOODS COST COMPARISON

Description of Goods	Unit of measure	Quantity	Cost (dollars)*
Item 1: Domestic/Designated Country Goods..... Foreign Goods..... Item 2: Domestic/Designated Country Goods..... Foreign Goods.....			

**Include all delivery costs to the construction site.*

g. If the Federal Agency denies an exception requested under section 1605 of the Recovery Act, the State will evaluate only the contractor's proposal based on the use of Domestic or Designated Country Goods.

h. Any request under subsection (b) submitted after the contract award must explain why the contractor could not reasonably foresee the need for such determination and could not have requested the determination before the contract was awarded. If the contractor does not submit a satisfactory explanation, the Federal Agency does not need to make a determination.

i. If the Federal Agency determines after the contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies, and the agency and the contractor negotiate adequate consideration, the agency will modify the contract to allow use of the Foreign Goods. However, when the basis for the exception is the unreasonable cost of a Domestic or Designated Country Good, adequate consideration must not be less than the differential established in the DOMESTIC/DESIGNATED COUNTRY AND FOREIGN GOODS COST COMPARISON table.

j. Section 1605 of the Recovery Act does not apply to equipment or tools which are not incorporated into the building or work.

6.030 Prevailing Wages

Under section 1606 of the Recovery Act, wages paid to all laborers and mechanics employed by the Contractor and each subcontractor on projects funded in whole or in part with funds available under the Recovery Act must not be less than prevailing wages on projects of a similar character in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's

determination regarding the prevailing wages applicable in Michigan is available at http://www.gpo.gov/davisbacon/mi.html. This provision supersedes section 2.204, Wage Rate Requirements.

6.040 Inspection & Audit of Records

In addition to the requirements of Article 2:

a. Contractor must permit both the United States Comptroller General or its representative and the United States Inspector General or its representative to:

   (1) examine any records that directly pertain to, or involve transactions relating to, this contract; and
   (2) interview any officer or employee of the Contractor or any of its subcontractors, regarding the activities funded with funds appropriated or otherwise made available by the RECOVERY ACT.

b. This provision must be included in all subcontracts.

c. Failure to comply with subsection (a) or (b) is considered a material breach and may result in the termination of the Contract.

6.050 Whistle Blower Protection for Recipients of Funds

Contractor must post notice of an employee's rights and remedies for whistleblower protections under section 1553 of the Recovery Act. Contractor must include this section in all subcontracts.

6.060 Funding of Programs

Under 2009 PA 7, Section 209, this Contract is supported with temporary federal funds made available by the Recovery Act. The programs supported with the temporary federal funds will not be continued with state financed appropriations once the temporary federal funds are expended.

6.070 Fixed Price- Competitively Bid

Contractor must, to the maximum extent possible, award subcontracts as fixed-price contracts through competitive bid procedures.

6.080 Segregation of Costs

Contractor shall segregate **obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the Recovery Act.**

6.090 Publication

Contractor must identify projects supported by the Recovery Act by including the appropriate emblems as the State may require.

6.100 Buy Michigan Preference

For contracts and subcontracts using Recovery Act funds, Contractor shall give a preference to products manufactured or services offered by Michigan-based firms if all other things are equal and if not inconsistent with federal statute.

6.110 Non- Discrimination

In addition to the requirements of Article 2, Contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

6.120 Prohibition on Use of Funds

Funds paid to the Contractor must not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

6.130 False Claims Act

Contractor must promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. 3729, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving the Recovery Act.

6.140 Job Opportunity Posting Requirements

Contractor shall post notice of job opportunities funded by this Contract in the Michigan Talent Bank, www.michworks.org/mtb.