

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)	
to investigate, audit, and review the methods)	
employed by CONSUMERS ENERGY COMPANY)	Case No. U-21305
and DTE ELECTRIC COMPANY to secure)	
good electric service and ensure the safety of the)	
public pursuant to MCL 460.555 and MCL 460.556.)	
_____)	

At the August 30, 2023 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

On October 5, 2022, the Commission issued an order in this case directing the Commission Staff (Staff) to commence the process of hiring a consultant to perform a comprehensive, independent third-party audit and review of the distribution systems, including all equipment and operations, of Consumers Energy Company (Consumers) and DTE Electric Company (DTE Electric). Subsequently, the Staff worked with the Michigan Department of Technology, Management, and Budget to issue Request for Proposal No. 23000000137 (RFP) seeking bidders to perform the audit. On July 11, 2023, the contract was awarded to The Liberty Consulting Group.

On July 20, 2023, Consumers and DTE Electric (the Companies) filed a joint motion for a protective order for use in this non-contested case pursuant to Mich Admin Code, R 792.10432. The motion was accompanied by a proposed protective order with three attachments: (1) a standard Nondisclosure Certificate, (2) a Critical Energy Infrastructure Information (CEII) Nondisclosure Certificate, and (3) a copy of the RFP. The Companies state that they understand that the audit may begin as soon as August 2023, and they posit that “the auditor will likely request confidential or proprietary information, such as commercially or security-sensitive information, including CEII, information obtained under license from a third party, personal information of the Companies’ coworkers, or trade secrets.” Motion, pp. 1-2. Thus, they seek approval of a protective order.

The Companies note that, under the RFP, “information that the auditor collects becomes ‘State Data,’ which includes, among other things, ‘(a) the State’s data, user data, and any other data collected, used, processed, stored, or generated as the result of the Contract Activities; [and] (b) personally identifiable information (“PII”) collected, used, processed, stored, or generated as the result of the Contract Activities’” Motion, p. 2 (quoting the RFP, which is attached to this order as Attachment 3 to Exhibit A, ¶ 33). The Companies state that such data could be the subject of a request under the Freedom of Information Act (FOIA), MCL 15.231, *et seq.* However, they note that MCL 15.243(1)(d) exempts from disclosure under FOIA “[r]ecords or information specifically described and exempted from disclosure by statute.” Motion, p. 2 (quoting MCL 15.243(1)(d)). The Companies state that the Federal Power Act (FPA) and regulations promulgated thereunder protect certain CEII from disclosure, specifically under 16 USC 824o-1 which provides that CEII shall not be made available for disclosure under state law. The Companies note that the FPA:

defines “critical electric infrastructure information” to “include[] information that qualifies as critical energy infrastructure information,” 16 USC § 824o–1(a)(3); 18 CFR § 388.113(c), which in turn is defined as engineering, vulnerability, or detailed design information about critical infrastructure, the destruction of which would negatively affect security, economic security, public health or safety. 18 CFR §§ 388.113(c)(2), (c)(4).

Motion, p. 2. The Companies aver that certain information regarding distribution infrastructure is CEII “and is exempt from disclosure if certain regulatory procedures are followed. See 18 CFR § 388.113(d)(1), (h)(2).” Motion, p. 3. The Companies note that Case No. U-20763 provides precedent for adopting protective orders with separate CEII non-disclosure agreements (NDAs). The Companies state that their proposed protective order and accompanying certificates are patterned after the protective order approved in that case with the following modifications:

- a. there are additional provisions covering State Data in the possession of the auditor, although these provisions require no action on the part of the auditor beyond what the RFP already requires;
- b. the Protective Order clarifies that protected material exchanged among the Companies and their consultants does not lose its protected status or become public information by virtue of the exchange; and
- c. this is not a contested case, so some provisions common in other protective orders were not required, although this Protective Order does account for the unlikely possibility that other entities could attempt to intervene.

Motion, p. 3.

No response to the motion was filed.

The Commission agrees with the Companies that the audit is likely to involve the production of CEII, along with commercially sensitive, security sensitive, or personally identifiable information and information obtained from third parties, and thus the Commission finds it advisable to approve the protective order attached as Exhibit A¹ for use in this matter. As the

¹ The Companies’ proposed protective order has been revised to delete the requirement for an Administrative Law Judge’s signature and to correct an attachment reference.

Companies note, the FPA and regulations promulgated thereunder provide for the protection of CEII from disclosure under state law. *See*, 16 USC 824o-1(d)(1)(B), (d)(6), and (f)(3); and 18 CFR 388.113(c)(1), (d), and (h). The approved protective order, which is similar to the protective order approved in Case No. U-20763, contains NDAs for both standard and CEII information and provides a process for addressing potential issues that may arise under FOIA.

THEREFORE, IT IS ORDERED that the protective order attached as Exhibit A is approved for use in this matter.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of August 30, 2023.

Lisa Felice, Executive Secretary

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to investigate, audit, and review the methods)	
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pursuant to MCL 460.555 and MCL 460.556.)	
<hr/>)	

PROTECTIVE ORDER

This Protective Order governs the use and disposition of Protected Material that Consumers Energy Company or DTE Electric Company (the “Companies”) discloses to the Michigan Public Service Commission (“MPSC” or the “Commission”), its Staff, or the Independent Auditor selected to review the Companies’ distribution system, per the MPSC’s October 5, 2022 Order in Case No. U-21305, in circumstances described in this order. When the Companies disclose Protected Material, the Companies are referred to as the “Disclosing Party” and the recipient is the “Receiving Party” (defined further below).

The intent of this Protective Order is to protect non-public, confidential information and materials. This Protective Order defines “Protected Material” and describes the manner in which Protected Material is to be identified and treated.

Accordingly, IT IS ORDERED:

I. “Protected Material” and Other Definitions

A. For the purposes of this Protective Order, “Protected Material” consists of trade secrets, confidential or proprietary information, or commercially or security-sensitive information, including Critical Energy Infrastructure Information (“CEII”), provided by a Disclosing Party to a Receiving Party and identified as confidential or protected. Subject to challenge under Paragraph

IV.A, Protected Material also includes the following information disclosed during the course of Case No. U-21305 or the independent audit initiated in this case:

1. Information obtained under license from a third-party licensor, to which the Disclosing Party is a licensee, that is subject to any confidentiality or non-transferability clause. This information includes reports; analyses; models (including related inputs and outputs); trade secrets; and confidential, proprietary, or commercially sensitive information that the Disclosing Party or one of its witnesses receives as a licensee and is authorized by the third-party licensor to disclose consistent with the terms and conditions of this Protective Order.

2. Compensation benefits or other personal information of the Companies' coworkers.

3. Information that could identify the bidders and bids in a competitively bid engineering, procurement, or construction contract at any stage of the selection process (i.e., before the Disclosing Party has entered into an agreement or selected a contractor).

4. Any memorandum, handwritten notes, or any other form of information that copies, contains, or discloses the Protected Material.

B. The information subject to this Protective Order does not include:

1. Information that is or has become available to the public through no fault of the Receiving Party or Reviewing Representative and no breach of this Protective Order, or information that is otherwise lawfully known by the Receiving Party without any obligation to hold it in confidence (Protected Material exchanged among the Companies or their consultants does not lose its protected status or become public information by virtue of the exchange);

2. Information received from a third party free to disclose the information without restriction;

3. Information that is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization;

4. Information that is required by law or regulation to be disclosed, but only to the extent of the required disclosure; or

5. Information that is disclosed in response to a valid, non-appealable order of a court of competent jurisdiction or governmental body, but only to the extent the order requires.

C. “Party” refers to the Companies, MPSC Staff (“Staff”), or any other person, company, organization, or association later granted intervention in Case No. U-21305 under the MPSC’s Rules of Practice and Procedure. Mich Admin Code, R 792.10401 et seq.

D. “Receiving Party” means any Party, other than the Companies, who receives access to or ownership over Protected Material, subject to the requirement that the Receiving Party’s Reviewing Representative sign the standard Nondisclosure Certificate attached to this Protective Order as Attachment 1 or the CEII Nondisclosure Agreement and Certificate attached to this Protective Order as Attachment 2. “Receiving Party” does not include the Independent Auditor or its employees or contractors who are subject to separate contractual obligations to maintain the confidentiality of Protected Material.

E. “Reviewing Representative” means a person who has signed a Nondisclosure Certificate and who is:

1. an attorney representing a Receiving Party in connection with this case or the associated distribution audit;

2. an attorney, paralegal, or other employee associated, for the purpose of this case, with an attorney described in Paragraph I.E.1;

3. an expert or employee of an expert retained by a Receiving Party to advise or prepare material for the MPSC's consideration in this proceeding; or

4. an employee or other representative of a Receiving Party with significant responsibility in this case.

A Reviewing Representative is responsible for assuring that persons under his or her supervision and control comply with this Protective Order.

F. "Nondisclosure Certificate" means one of the two certificates attached to this Protective Order, which is signed by a Reviewing Representative who has been granted access to Protected Material and agreed to be bound by the terms of this Protective Order.

II. Access to and Use of Protected Materials

A. This Protective Order governs the use of all Protected Material that is marked as required by Paragraph III.A and made available for review by the Disclosing Party to any Receiving Party or Reviewing Representative. This Protective Order protects: 1) the Protected Material; 2) any copy or reproduction of the Protected Material made by any person; and 3) any memorandum, handwritten notes, or any other form of information that copies, contains, or discloses Protected Material. All Protected Material in the possession of a Receiving Party shall be maintained in a secure place. Access to Protected Material shall be limited to persons authorized to have access subject to the provisions of this Protective Order.

B. This Protective Order governs Protected Material disclosed to the independent auditor selected to review the Companies' distribution system, per the MPSC's October 5, 2022 Order in Case No. U-21305 in the following circumstances:

1. When the Protected Material that is disclosed becomes “State Data,” as this term is defined in Request for Proposal No. 230000001370 (Attachment 3 to this Protective Order) issued by the Michigan Department of Technology, Management, and Budget.

2. When Protected Material that is disclosed to the Independent Auditor is turned over to a Party or the MPSC for its review or use.

C. Protected Material shall be used and disclosed by the Receiving Party solely in accordance with the terms and conditions of this Protective Order. A Receiving Party may authorize access to and use of Protected Material by a Reviewing Representative identified by the Receiving Party, subject to Paragraphs III and V below, only as necessary to analyze the Protected Material, prepare reports or other filings in Case No. U-21305, or advise the MPSC. These individuals shall not release or disclose the content of Protected Material to any other person or use the information for any other purpose.

D. The Disclosing Party retains the right to object to any designated Reviewing Representative if the Disclosing Party has reason to believe that there is an unacceptable risk of misuse of confidential information. If a Disclosing Party objects to a Reviewing Representative, the Disclosing Party and the Receiving Party will attempt to reach an agreement to accommodate that Receiving Party’s request to review Protected Material. If no agreement is reached, then either the Disclosing Party or the Receiving Party may submit the dispute to the presiding officer. If the Disclosing Party notifies a Receiving Party of an objection to a Reviewing Representative, then the Protected Material shall not be provided to that Reviewing Representative until the objection is resolved by agreement or by the presiding officer.

E. Before reviewing any Protected Material, including copies, reproductions, and copies of notes of Protected Material, a Receiving Party and Reviewing Representative shall sign a

copy of the standard Nondisclosure Certificate (Attachment 1 to this Protective Order) or the CEII Nondisclosure Agreement and Certificate (Attachment 2 to this Protective Order), depending on the nature of the information being reviewed, agreeing to be bound by the terms of this Protective Order. The Reviewing Representative shall also provide a copy of the executed Nondisclosure Agreement and/or Certificate to the Disclosing Party.

F. Even if no longer engaged in this proceeding, every person who has signed a Nondisclosure Certificate continues to be bound by the provisions of this Protective Order. The obligations under this Protective Order are not extinguished or nullified by entry of a final order in this case and are enforceable by the MPSC or a court of competent jurisdiction. To the extent Protected Material is not returned to a Disclosing Party, it remains subject to this Protective Order.

G. Members of the MPSC, Staff assigned to assist the MPSC with its deliberations, and the presiding officer shall have access to all Protected Material that is submitted to the MPSC without the need to sign the Nondisclosure Certificate.

H. A Party retains the right to seek further restrictions on the dissemination of Protected Material to persons who may later seek to intervene in this MPSC proceeding.

I. If a Receiving Party seeks access to CEII as defined in Federal Energy Regulatory Commission ("FERC") rules, specifically 18 CFR § 388.113(c), the Receiving Party shall submit a separate non-disclosure agreement meeting the requirements of 18 CFR § 388.113(h)(2) that is Attachment 2 to this order. The Disclosing Party shall have five business days from receipt of the non-disclosure agreement to object to the Reviewing Representative's access to the CEII, in which case the objecting Party shall file a motion with the MPSC in this docket, with no disclosure required before the MPSC issues a decision, or else the Disclosing Party shall provide the material to the Reviewing Representative. If the Disclosing Party believes that disclosure of some requested

information poses an unresolvable security risk or other concern in spite of the protections provided above, the Party may promptly seek additional relief from the MPSC, with no disclosure required before the MPSC's decision. The parties reserve the right to seek a stay from the MPSC and any court or appellate court of competent jurisdiction prior to making any ordered disclosure, but this order does not grant any automatic stay.

III. Procedures

A. The Disclosing Party shall mark any information that it considers confidential as "CONFIDENTIAL: SUBJECT TO THE PROTECTIVE ORDER ISSUED ON [INSERT DATE] IN CASE NO. U-21305." If the Receiving Party or a Reviewing Representative makes copies of any Protected Material, they shall conspicuously mark the copies as Protected Material. Notes of Protected Material shall also be conspicuously marked as Protected Material by the person making the notes.

B. If a Receiving Party wants to quote, refer to, or otherwise use Protected Material in reports or in some other form in this proceeding (including administrative or judicial appeals), the Receiving Party shall do so consistent with procedures that will maintain the confidentiality of the Protected Material. For purposes of this Protective Order, the following procedures apply:

1. Written submissions using Protected Material shall be filed in a sealed record to be maintained by the MPSC's Docket Section, or by a court of competent jurisdiction, in envelopes clearly marked on the outside, "CONFIDENTIAL — SUBJECT TO THE PROTECTIVE ORDER ISSUED IN CASE NO. U-21305." Simultaneously, identical documents and materials, with the Protected Material redacted, shall be filed and disclosed the same way that evidence or briefs are usually filed.

2. Hearings or argument about Protected Material shall be conducted on a separate record to be maintained by the MPSC's Docket Section or by a court of competent jurisdiction. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and persons otherwise subject to this Protective Order. The Receiving Party presenting the Protected Material during the course of the proceeding shall give the presiding officer or court sufficient notice to allow the presiding officer or court an opportunity to take measures to protect the confidentiality of the Protected Material.

3. Copies of the documents filed with the MPSC or a court of competent jurisdiction, which contain Protected Material, including the portions of the exhibits, transcripts, or briefs that refer to Protected Material, must be sealed and maintained in the MPSC's or court's files with a copy of the Protective Order attached.

C. It is intended that the Protected Material subject to this Protective Order should be shielded from disclosure by a Receiving Party only to the extent permitted by law. If any person files a request under the Freedom of Information Act ("FOIA") with the MPSC or any other Party subject to disclosure requirements under FOIA, such Party shall promptly notify the Disclosing Party, and the Disclosing Party may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. In light of Section 5 of the Michigan Freedom of Information Act, MCL 15.235, the notice must be given at least five (5) business days before the MPSC and/or its Staff grant the request in full or in part.

IV. Termination of Protected Status

A. A Receiving Party reserves the right to challenge whether a document or information is Protected Material and whether this information can be withheld under this

Protective Order. In response to a motion or on its own initiative, the MPSC or a presiding officer assigned to hear the motion may revoke a document's protected status after notice and hearing. If the presiding officer revokes a document's protected status, then the document loses its protected status after 14 days unless a Party files an application for leave to appeal the ruling to the MPSC within that time period. Any Party opposing the application for leave to appeal shall file an answer with the MPSC no more than 14 days after the filing and service of the appeal. If an application is filed, then the information will continue to be protected from disclosure until either the time for appeal of the MPSC's final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired.

B. If a document's protected status is challenged under Paragraph IV.A, then the Disclosing Party bears the burden of proving that the document should continue to be protected from disclosure.

V. Retention of Documents

Protected Material remains the property of the Disclosing Party, except as required by applicable law and State retention schedules, and only remains available to the Receiving Party until the time expires for petitions for rehearing of a final MPSC order in this Case No. U-21305 or until the MPSC has ruled on all petitions for rehearing in this case (if any). However, an attorney for a Receiving Party who has signed a Nondisclosure Certificate and who is representing the Receiving Party in an appeal from an MPSC final order in this case may retain copies of Protected Material until either the time for appeal of the MPSC's final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired. On or before the time specified by the preceding sentences, the Receiving Party shall return to the Disclosing Party all Protected Material in its possession or in

the possession of its Reviewing Representatives—including all copies and notes of Protected Material—or certify in writing to the Disclosing Party that the Protected Material has been destroyed.

VI. Limitations and Disclosures

The provisions of this Protective Order do not apply to a particular document, or portion of a document, described in Paragraph II.A if a Receiving Party can demonstrate that it has been previously disclosed by the Disclosing Party on a non-confidential basis or meets the criteria set forth in Paragraphs I.B.1 through I.B.5. A Receiving Party intending to disclose information taken directly from materials identified as Protected Material must—before actually disclosing the Information do one of the following: 1) contact the Disclosing Party’s counsel of record and obtain written permission to disclose the information, or 2) challenge the confidential nature of the Protected Material and obtain a ruling under Paragraph IV that the information is not confidential and may be disclosed in or on the public record.

VII. Remedies

If a Receiving Party violates this Protective Order by improperly disclosing or using Protected Material, the Receiving Party shall take all necessary steps to remedy the improper disclosure or use. This includes immediately notifying the MPSC and the Disclosing Party, in writing, of the identity of the person known or reasonably suspected to have obtained the Protected Material. A Party or person that violates this Protective Order remains subject to this paragraph regardless of whether the Disclosing Party could have discovered the violation earlier than it was discovered. This paragraph applies to both inadvertent and intentional violations. Nothing in this Protective Order limits the Disclosing Party’s rights and remedies, at law or in equity, against a Party or person using Protected Material in a manner not authorized by this Protective Order,

including the right to obtain injunctive relief in a court of competent jurisdiction to prevent violations of this Protective Order, or any Party's defenses to same.

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pursuant to MCL 460.555 and MCL 460.556.)	
_____)	

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Material is provided to me pursuant to the terms and restrictions of the Protective Order issued in Case No. U-21305, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of the Protective Order. I understand that the substance of the Protected Material (as defined in the Protective Order), any notes from Protected Material, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential and shall not be disclosed to anyone other than in accordance with the Protective Order.

Reviewing Representative

Date: _____

Representing:

S T A T E O F M I C H I G A N
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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_____)	

**NONDISCLOSURE AGREEMENT AND CERTIFICATE FOR CRITICAL ENERGY
INFRASTRUCTURE INFORMATION**

I hereby agree and certify my understanding that access to Critical Energy Infrastructure Information ("CEII") as defined at 18 CFR § 388.113(c) is provided to me pursuant to the terms and restrictions of this Nondisclosure Agreement and the Protective Order issued in Case No. U-21305, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of this Nondisclosure Agreement and the Protective Order. I further agree that:

1. I will use CEII only for the purpose for which it was requested;
 2. I will only discuss CEII with authorized recipients;
 3. I will keep CEII in a secure place in a manner that prevents unauthorized access;
 4. I will destroy CEII or return it to the Disclosing Party upon request;
 5. I understand that CEII is not subject to release under the Freedom of Information Act;
 6. I understand that I am obligated to protect CEII even after a designation as CEII has lapsed until a determination by the MPSC that the information should no longer be designated as CEII;
- and

7. I will report all unauthorized disclosures of CEII to the Disclosing Party.

Reviewing Representative

Date: _____

Representing:

PROPOSAL INSTRUCTIONS

Department of Technology, Management, and Budget – Central Procurement Services

Utility Distribution System Audit Request for Proposal No. 230000001370

Solicitation Manager Name: Emily Fedewa
 Direct Phone: 517-897-7321
 Email: fedewae3@michigan.gov
 Main Phone: 1-855-MI-PURCH 1-855-647-8724

This is a Request for Proposal (RFP) for:
A consultant to perform an independent third-party audit and review of the distribution systems, including all equipment and operations, of Consumers Energy and DTE Electric.

RFP Timeline

Event	Time	Date
RFP issue date	N/A	Monday, March 13, 2023
Pre-proposal meeting	11:30 am EST	Friday, March 17, 2023
Deadline for bidders to submit questions about this RFP	1:55 p.m. EST	Wednesday, March 22, 2023
Anticipated date the State will post answers to bidder questions on www.michigan.gov/SIGMAVSS	4:00 pm EST	Wednesday, March 29, 2023
Proposal deadline*	1:55 p.m. EST	Tuesday, April 25, 2023
Anticipated contract begin date	N/A	Friday, September 1, 2023

***A bidder's proposal received at 1:55:01 p.m. Eastern is late and subject to disqualification.**

This RFP is subject to change. Check www.michigan.gov/SIGMAVSS for current information.

- 1. PROPOSAL PREPARATION.** The State recommends reading **all** RFP materials prior to preparing a proposal, particularly these Proposal Instructions and the Vendor Questions Worksheet. Bidders must follow these Proposal Instructions and provide a complete response to the items indicated in the table below. References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within the proposal. Include the bidder's company name in the header of all documents submitted with your proposal. **Note that all documents and information submitted as part of a proposal will become public record immediately upon receipt by the State. Proposals received by the State may be posted on the State's publicly available website after bidders are notified of the award recommendation.**

RFP Structure and Documentation

Document	Description	Bidder Response Instructions
Cover Page	Provides RFP title and number, important dates, and contact information for Solicitation Manager	Informational
Proposal Instructions	Provides RFP instructions to bidders	Informational
Confidential Treatment Form	Required verification on whether bidder's proposal contains confidential information	Bidder to complete and submit by proposal deadline
Vendor Questions Worksheet	Questions to bidders on background and experience	Bidder to complete and submit by proposal deadline
Schedule A – Statement of Work	Statement of work	Bidder to complete and submit by proposal deadline
Schedule B – Pricing	Pricing for goods and services sought by the State through this RFP	Bidder to complete and submit by proposal deadline
Schedule C – Insurance	Insurance Requirements	Bidder to complete and submit by proposal deadline
Contract Terms	Provides legal terms for a contract awarded through this RFP	Deemed accepted by bidder unless information required in the Evaluation Process section of this document is submitted by proposal deadline



2. **CONTACT INFORMATION FOR THE STATE.** The sole point of contact for the State concerning this RFP is listed on the Cover Page. Contacting any other State personnel, agent, consultant, or representative about this RFP may result in bidder disqualification.

3. **PRE-PROPOSAL MEETING.**

A pre-proposal meeting will be held on March 17th, 2023, at 11:30 am EST.

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 231 837 714 483

Passcode: kX5Cpc

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 248-509-0316,,791456990#](#) United States, Pontiac

Phone Conference ID: 791 456 990#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

Statements made by the Solicitation Manager or designee at a pre-proposal meeting are not considered modifications to the RFP. If, however, the Solicitation Manager determines modifications to the RFP are warranted after the meeting, modifications will be posted in writing on www.michigan.gov/SIGMAVSS as explained in the **Modifications** section of this document

Attendance at the pre-proposal meeting is not limited. If the pre-proposal meeting is mandatory, a bidder may be disqualified by being late. Subcontractor sign-in is permitted in lieu of the bidder as evidence of attendance. Accessibility requests for reasonable accommodations at the pre-proposal meeting should be made with the Solicitation Manager at least 10 business days before the date of the meeting. Accommodation requests received outside this time period cannot be guaranteed.

4. **MODIFICATIONS.** The State may modify this RFP at any time. Modifications will be posted on www.michigan.gov/SIGMAVSS. This is the only method by which the RFP may be modified.
5. **QUESTIONS.** Bidder questions about this RFP must be emailed to the Solicitation Manager no later than the time and date specified on the Cover Page. In the interest of transparency, only written questions are accepted. Answers to questions will be

posted on www.michigan.gov/SIGMAVSS. Submit questions using the format below; a Microsoft Excel format or similar is suggested.

Q #	Document and Section	Page #	Bidder Question

6. DELIVERY OF PROPOSAL.

Electronic – The bidder must submit its proposal, all attachments, and any modifications or withdrawals electronically through www.michigan.gov/SIGMAVSS. The price proposal should be saved separately from all other proposal documents. The bidder should submit all documents in a modifiable (native) format (examples include but are not limited to Microsoft Word or Excel and Google Docs or Sheets). In addition to submitting documents in a modifiable format, the bidder may also submit copies of documents in PDF. Attachment file size is limited to 6 MB per document. Bidder's failure to submit a proposal as required may result in disqualification. The proposal and attachments must be fully uploaded and submitted prior to the proposal deadline. **Do not wait until the last minute to submit a proposal**, as the SIGMA VSS system requires the creation of an account and entry of certain information, in addition to uploading and submitting the materials. The SIGMA VSS system **will not** allow a proposal to be submitted after the proposal deadline identified in the solicitation Closing On/Closing Date fields (Summary view/Detail view), even if a portion of the proposal has been uploaded.

Questions on how to submit information or how to navigate in the SIGMA VSS system can be answered by calling **(517) 284-0540 or (888) 734-9749**. The Solicitation Manager will not provide assistance related to the submittal of the proposal and all attachments on the day of the proposal deadline. Responsibility for a complete submission lies with the bidder. **Note that all documents and information submitted in any manner as part of a proposal will become public record immediately upon receipt by the State. Proposals received may be posted by the State on the State's publicly available website after bidders are notified of the award recommendation.**

7. EVALUATION PROCESS. The State will evaluate each proposal based on the following factors:

	Technical Evaluation Criteria	Weight
1.	Product Quality – Schedule A, Statement of Work, Sections 1-4	25
2.	Service Capabilities – Schedule A, Statement of Work, Sections 5	25
3.	Relevant Experience with References	20
4.	Delivery Capabilities – Schedule A, Statement of Work, Section 6	10
5.	Vendor Questions Worksheet	20
	Total	100

Proposals receiving 80 or more technical evaluation points will have pricing evaluated and considered for award.

The State may utilize all bidder information, without regard to a proposal's technical score, to determine fair market value for goods or services sought. The State is not obligated to accept the lowest price proposal. If applicable, the State's evaluation will include consideration of a bidder's qualified disabled veterans/service-disabled veteran owned business (QDV/SDVOB) status under [MCL 18.1261\(8\)](#). Additional information on the SDVOB preference is available at: [Michigan.gov/SDVOB](#).

The State strongly encourages strict adherence to the Contract Terms. The State reserves the right to deem a bid non-responsive for failure to accept the Contract Terms. Nevertheless, the bidder may submit proposed changes to the Contract Terms in track changes (i.e., visible edits) with an explanation of the bidder's need for each proposed change. Failure to include track changes with an explanation of the bidder's need for the proposed change constitutes the bidder's acceptance of the Contract Terms. General statements, such as that the bidder reserves the right to negotiate the terms and conditions, may be considered non-responsive. Failure to respond timely to requests for proposed changes to Contract Terms during ongoing negotiations may be cause for disqualification.

The State may but is not required to conduct an on-site visit to tour and inspect the bidder's facilities; require an oral presentation of the bidder's proposal; conduct interviews, research, reference checks, and background checks; and request additional price concessions at any point during the evaluation process.

8. **NOTICE OF DEFICIENCY.** The State reserves the right to issue a **Notice of Deficiency** to bidders if the State determines after the proposal deadline that a portion of the RFP was deficient, unclear, or ambiguous. Failure to respond to a **Notice of Deficiency** timely may be cause for disqualification.
9. **CLARIFICATION REQUEST.** The State reserves the right to issue a **Clarification Request** to a bidder to clarify its proposal if the State determines the proposal is not clear. Failure to respond to a **Clarification Request** timely may be cause for disqualification.
10. **RESERVATIONS.** The State reserves the right to:
 - a. Disqualify a bidder for failure to follow these instructions.
 - b. Discontinue the RFP process at any time for any or no reason. The issuance of an RFP, your preparation and submission of a proposal, and the State's subsequent receipt and evaluation of your proposal does not commit the State to award a contract to you or anyone, even if all the requirements in the RFP are met.
 - c. Consider late proposals if: (i) no other proposals are received; (ii) no complete proposals are received; (iii) the State received complete proposals, but the proposals did not meet mandatory minimum requirements or technical criteria; or (iv) the award process fails to result in an award.
 - d. Consider an otherwise disqualified proposal if no other proposals are received.
 - e. Disqualify a proposal based on: (i) information provided by the bidder in response to this RFP; (2) the bidder's failure to complete registration on

www.michigan.gov/SIGMAVSS ; or (3) if it is determined that a bidder purposely or willfully submitted false or misleading information in response to the RFP.

- f. Consider prior performance with the State in making its award decision.
 - g. Consider overall economic impact to the State when evaluating proposal pricing and in the final award recommendation. This includes but is not limited to: considering principal place of performance, number of Michigan citizens employed or potentially employed, dollars paid to Michigan residents, Michigan capital investments, job creation, tax revenue implications, and economically disadvantaged businesses.
 - h. Consider total-cost-of-ownership factors (e.g., transition and training costs) when evaluating proposal pricing and in the final award recommendation.
 - i. Refuse to award a contract to any bidder that has failed to pay State taxes or has outstanding debt with the State.
 - j. Enter into negotiations with one or more bidders on price, terms, technical requirements, or other deliverables.
 - k. Award multiple, optional-use contracts, or award by Contract Activity.
 - l. Evaluate the proposal outside the scope identified in the **Evaluation Process** section of this document if the State receives only one proposal.
- 11. AWARD RECOMMENDATION.** The contract will be awarded to the responsive and responsible bidder who offers the best value to the State, as determined by the State. Best value will be determined by the bidder meeting the minimum point threshold and offering the best combination of the factors stated in the **Evaluation Process** section of this document, and price, as demonstrated by the proposal. The State will post an **Award Recommendation and Evaluation Synopsis** on www.michigan.gov/SIGMAVSS or in the manner it was originally published.
- 12. DEBRIEF MEETING AND BID PROTEST.** The State will post an **Award Recommendation and Evaluation Synopsis** which will provide instructions on how to request a debrief meeting.
- If you wish to initiate a protest of the award, you must submit your written protest electronically at BidProtest-DTMB@michigan.gov no later than 3:00 pm., 5 business days after posting the **Award Recommendation and Evaluation Synopsis** on SIGMA VSS. The State reserves the right to adjust this timing and will publish any change.
- Additional information about the protest process is available at [DTMB - Programs and Policies \(michigan.gov\)](#) under the “Bidder Protests” link.
- 13. STATE ADMINISTRATIVE BOARD.** Contracts equal to \$250,000 or greater than require approval by the State Administrative Board. The State Administrative Board’s decision is final; however, its approval does not constitute a contract. The award process is not complete until the awarded contractor receives a contract fully executed by all parties.
- 14. GENERAL CONDITIONS.** The State will not be liable for any costs, expenses, or damages incurred by a bidder participating in this solicitation. The bidder agrees that

its proposal will be considered an offer to do business with the State in accordance with its proposal, including the Contract Terms, and that its proposal will be irrevocable and binding for a period of **180** calendar days from date of submission. If a contract is awarded to the bidder, the State may, at its option, incorporate any part of the bidder's proposal into a contract. This RFP is not an offer to enter into a contract. This RFP may not provide a complete statement of the State's environment or contain all matters upon which agreement must be reached. The bidder understands that their proposal will become public record immediately upon receipt by the State. Other than verified trade secrets, proposals submitted via www.michigan.gov/SIGMAVSS are the State's property.

15. CONFIDENTIAL TREATMENT FORM AND THE FREEDOM OF INFORMATION ACT. As a public record, all portions of the bidder's proposal and resulting contract are subject to disclosure as required under Michigan's Freedom of Information Act (FOIA), MCL 15.231, et seq. However, the State may exempt some information from disclosure as permitted by law. Under MCL 18.1261(13)(b), records containing "a trade secret as defined under section 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902," are exempt from disclosure under FOIA. In addition, "financial or proprietary information" submitted with a bidder's proposal is exempt from disclosure under FOIA. **A bidder's failure to comply with this Section is grounds for rejecting a bidder's proposal as non-responsive.** As a part of its proposal, each bidder must follow the procedure below.

- a. SUBMIT A COMPLETED "CONFIDENTIAL TREATMENT FORM" (CT FORM) WITH YOUR BID.** Completion and submission of the CT Form is required regardless of whether the bidder seeks confidential treatment of information. **Failure to submit a completed CT Form may be cause for disqualification from the solicitation process. If a bidder fails to properly complete and submit the CT Form or otherwise fails to follow CT Form instructions, the proposal may be publicly disclosed in its entirety without redaction after an award recommendation.**
 - i. Complete and sign Section 1 of the CT Form if the bidder does NOT request confidential treatment of information contained in its proposal; or
 - ii. Complete and sign Section 2 of the CT Form if the bidder requests confidential treatment of certain information. **Bidder must also submit a "Public Copy" of the proposal with the trade secret, financial, and proprietary information redacted and clearly labeled as the "Public Copy."**
 - iii. Failure to complete and sign a CT Form may result in disqualification of the bidder. **If a bidder fails to properly complete and submit the CT Form or otherwise fails to follow the CT Form instructions, the proposal, in its entirety, will be treated as a "Public Copy" and may be publicly disclosed by the State without redaction after bidders have been notified of an award recommendation**
- b. FOIA REQUESTS.** If a FOIA request is made for a bidder's proposal, the Public Copy may be distributed to the public along with the bidder's CT Form. The CT



Form is a public document and serves as an explanation for the redactions to the Public Copy. Do not put any trade secret, financial, or proprietary information in the CT Form. Do not redact the CT Form itself.

- c. **NO ADVICE.** The State will not advise a bidder as to the nature or content of documents entitled to protection from disclosure under FOIA or other laws, as to the interpretation of such laws, or as to the definition of trade secret or financial or proprietary information. Nothing contained in this provision will modify or amend requirements and obligations imposed on the State by FOIA or other applicable law.
- d. **FAILURE TO REQUEST CONFIDENTIAL TREATMENT.** Failure to request material be treated as confidential as specified herein relieves the State, its agencies, and personnel from any responsibility for maintaining material in confidence.
- e. Bids containing a request to maintain an entire proposal as confidential may be rejected as non-responsive. Bidders may not request confidential treatment with respect to resumes, pricing, and marketing materials. The State reserves the right to determine whether material designated as exempt by a bidder falls under MCL 18.1261 or other applicable FOIA exemptions. If a FOIA request is made for materials that the bidder has identified as trade secret, financial, or proprietary information, the State has the final authority to determine whether the materials are exempt from disclosure under FOIA.
- f. Bidder forever releases the State, its departments, subdivisions, officers, and employees from all claims, rights, actions, demands, damages, liabilities, expenses and fees, which arise out of or relate to the disclosure of all or a portion of bidder's proposal submitted under this RFP. Bidder must defend, indemnify and hold the State, its departments, subdivisions, officers, and employees harmless, without limitation, from and against all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to any FOIA request, including potential litigation and appeals, related to the portion of bidder's proposal submitted under this RFP that bidder has identified as a trade secret, or financial or proprietary information. The State will notify bidder in writing if indemnification is sought. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, or any portion thereof, if the State deems necessary. Bidder will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. If a State employee, official, or law is involved or challenged, the State may control the defense of that portion of the claim. 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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

CONFIDENTIAL TREATMENT FORM

INSTRUCTIONS. Bidder must complete either *Section 1* or *Section 2* of this CT Form and sign where indicated. **Do not complete both sections.** This CT Form must be signed by the individual who signed the bidder's proposal. A completed CT Form must be submitted with your proposal, regardless of whether your proposal contains confidential information.

Failure to submit a completed CT Form with your bid is grounds for rejecting the proposal as non-responsive. If a bidder fails to properly complete and submit the CT Form or otherwise fails to follow CT Form Instructions, the proposal, in its entirety, will be treated as a "Public Copy" and may be publicly disclosed by the State without redaction after bidders have been notified of an award recommendation. See the Confidential Treatment Form and The Freedom of Information Act (FOIA) sections of the Proposal Instructions for additional information

Section 1. CONFIDENTIAL TREATMENT IS NOT REQUESTED

This section must be completed, signed, and submitted with the proposal if the bidder does **not** request confidential treatment of any material contained in the proposal. **If this section is completed, do not complete Section 2. CONFIDENTIAL TREATMENT IS REQUESTED.**

By signing below, the bidder affirms that confidential treatment of material contained in their proposal is not requested.

RFP Number

RFP Title

Signature

Date

Printed Name, Title, Company

Section 2. CONFIDENTIAL TREATMENT IS REQUESTED

This section must be completed, signed, and submitted with the proposal if bidder requests confidential treatment of any material contained in the proposal. Submission of a completed CT Form is required to request confidential treatment. **If this section is completed, do not complete Section 1. CONFIDENTIAL TREATMENT IS NOT REQUESTED.**

Provide the information in the table below. Bidder may add rows or additional pages using the same format shown in the table. Bidder must specifically identify the information to be protected as confidential and state the reasons why protection is necessary.

The CT Form will not be considered fully complete unless, for each confidentiality request, the bidder: (1) identifies the Proposal Page #, Section #, and Paragraph #, (2) identifies whether the material is a Trade Secret (TS), Proprietary Financial Information (FI), or Proprietary Information (PI), and (3) explains the specific legal grounds that support treatment of the material as TS, FI, or PI. Bidders must provide a complete justification as to how the material falls within the scope of an applicable FOIA exemption or relevant case law. Bidders must not simply cite to an applicable exemption or case name. Bidders must also provide the contact information for the person at their organization authorized to respond to inquiries by the State concerning the material.

Bidder must also submit a “Public Copy” of the proposal with the trade secret, financial, and proprietary information redacted and clearly labeled as the “Public Copy”.

(1) Proposal Page #, Section #, Paragraph #	(2) Material is Trade Secret (TS), Proprietary Financial Information (FI), Proprietary Information (PI)	(3) Applicable FOIA Exemption with Written Justification	(4) Bidder Contact Information

By signing below, the bidder affirms that confidential treatment of material contained in their proposal is requested and has attached to this form a redacted “Public Copy” of the bidder’s proposal.

 RFP Number

 RFP Title

 Signature

 Date

 Printed Name, Title, Company



VENDOR QUESTIONS WORKSHEET

Provide a detailed response to each question. "You" and "company" refers to the bidder.

Information Sought	Bidder Response
1. Contact Information	
Bidder's sole contact person during the RFP process. Include name, title, address, email, and phone number.	
Person authorized to receive and sign a resulting contract. Include name, title, address, email, phone number and vendor customer code in SIGMA VSS.	
2. Company Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	
What state was the company formed in?	
Phone number.	
Website address.	
Number of years in business.	
Number of employees.	
Legal business name and address of parent company, if any.	
Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	
Discuss your company's history. Has growth been organic, through mergers and acquisitions, or both?	
Has bidder ever been debarred, suspended, or disqualified from bidding or contracting with any entity, including the State of Michigan? If yes, provide the date, the entity, and details about the situation.	
Has your company been a party to litigation against the State of Michigan? If the answer	

Information Sought	Bidder Response
is yes, then state the date of initial filing, case name and court number, and jurisdiction.	
Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.	
State your gross annual sales for each of the last 5 years. If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.	
Describe partnerships and strategic relationships you think will bring significant value to the State.	
State the physical address of the place of business that would have primary responsibility for this account if bidder is awarded a contract under this RFP.	
3. Qualified Disabled Veteran/Service-Disabled Veteran-Owned Business Program	
Under MCL 18.1261 , a “qualified disabled veteran” means a business entity that is 51% or more owned by 1 or more veterans with a service-connected disability. A “service-connected disability” means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16). Are you a qualified disabled veteran?	Enter YES or NO.
To demonstrate qualification as a qualified disabled veteran, you must provide: (a) Proof of service and conditions of discharge (DD214 or equivalent); (b) Proof of service-connected disability (DD214 if the disability was documented at	Enter the names of documents submitted with your proposal to demonstrate status as a qualified disabled veteran.

Information Sought	Bidder Response
<p>discharge or Veterans Administration Rating Decision Letter or equivalent if the disability was documented after discharge); and</p> <p>(c) Legal documents setting forth the ownership of the business entity.</p> <p>In lieu of the documentation identified above, you may provide proof of certification by the National Veterans Business Development Council.</p>	
4. Participation in RFP Development or Evaluation	
<p>Did your company, an employee, agent, or representative of your company, or any affiliated entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities or equipment, and common use of employees.</p>	<p>Enter YES or NO.</p> <p>If you enter "YES", you are not eligible for contract award or to work as a subcontractor for the awarded vendor.</p>
<p>If you are awarded a contract under this solicitation, in order to provide the goods or services required under a resulting contract, do you intend to partner or subcontract with a person or entity that assisted in the development of this solicitation?</p>	<p>Enter YES or NO.</p> <p>If you enter "YES," you are not eligible for contract award. An awarded vendor may not partner or subcontract with anyone to provide goods and services required under a resulting contract if that subcontractor or partner assisted in the development of this solicitation.</p>
<p>Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP?</p>	<p>Enter YES or NO.</p> <p>If you enter "YES", you are not eligible for contract award or to work as a subcontractor for the awarded vendor.</p>
5. State of Michigan Experience and Prior Experience	
<p>Does your company have experience working with the State of Michigan? If so,</p>	

Information Sought	Bidder Response
please provide a list (including the contract number) of the contracts you hold or have held with the State for the last 10 years.	
Describe at least 3 relevant experiences from the last 10 years supporting your ability to successfully manage a contract of similar size and scope for the work described in this RFP. The experience listed must be similar in nature to the project described in this RFP.	
Experience 1	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
Experience 2	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State.	

Information Sought	Bidder Response
Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
Experience 3	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
6. Standard Contract Terms	
Bidder must affirm agreement with the attached Contract Terms. If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	

Information Sought	Bidder Response
7. Insurance Requirements	
Bidder must affirm agreement with the attached Schedule C (Insurance Requirements). If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with the Bidder's proposal.	Enter YES or NO.
8. Michigan Economic Impact	
Number of employees currently employed at locations within the State of Michigan.	
Number of additional employees to be employed at locations within the State of Michigan if awarded this Contract (if any).	
Minimum wage paid to employees employed at locations within the State of Michigan.	
Average wage paid to employees employed at locations within the State of Michigan.	
Percentage of employees employed at locations within the State of Michigan that are covered by employer-provided health insurance.	
9. Labor, Antidiscrimination and Environmental Laws Compliance	
Bidder must disclose any violations of state or federal labor, antidiscrimination and employment laws and regulations received within the past five years.	
Bidder must disclose any violations of state or federal environmental laws and regulations received within the past five years.	
10. Supplier Diversity	
Does your company have a supplier diversity program or training?	Enter YES or NO.
Bidder agrees that if Bidder is awarded a contract with a dollar amount of \$500,000 or	Enter YES or NO.

Information Sought	Bidder Response
greater from this RFP, Bidder must provide a copy of their current EEO-1 demographic report provided that Bidder meets Federal requirements to file an EEO-1 report.	
11. Other	
Classification of Employees. I certify that the company has properly classified its employees in accordance with federal/state labor and employment laws.	Enter YES or NO.
Abusive Labor Practices. The Contractor certifies that it will not furnish any Deliverable that was produced fully or partially by forced labor, forced or indentured child labor, or indentured servitude.	Enter YES or NO.
Certification of Michigan Business - Public Act 431 of 1984, Sec. 268. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Business Tax Corporate Income Tax Return. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Income Tax return showing income generated in, or attributed to the State of Michigan. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, withheld Michigan Income Tax from compensation paid to the company's owners and remitted the tax to the Michigan Department of Treasury.	Enter YES or NO.
Iran Linked Business- Public Act 517 of 2012. I certify that the Company is not an Iran-Linked business as defined by Public Act 517 of 2012.	Enter YES or NO.
Clean Corporate Citizen. I certify that the Company is a Clean Corporate Citizen as defined by the Environmental Protection Act, 1994 PA 451.	Enter YES or NO.
Convict Labor. The Contractor certifies that if using convict labor, it is complying with all	Enter YES or NO.

Information Sought	Bidder Response
applicable state and federal laws and policies.	
SOM Debt/Tax Payment. All SOM tax/debts. I certify that all applicable State of Michigan taxes are paid, and that no outstanding debt is owed to the State of Michigan.	Enter YES or NO.
Authorization to Verify Information Provided by Vendor. I authorize the State to verify that all information provided in this registration, in bidding and contracting documents, and any attachments or supplement documents and processes are accurate.	Enter YES or NO.
12. Response to State Requests	
Bidder agrees to respond, by established deadlines, to all requests from the State including but not limited to, clarification requests, notices of deficiency, and proposed changes to Contract Terms.	Enter YES or NO.

Contractor must enter company name here.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Request for Proposal (RFP) No. 230000001370

Utility Distribution System Audit

This schedule identifies the anticipated requirements of any Contract resulting from this RFP. The term “Contractor” in this document refers to a bidder responding to this RFP, as well as the Contractor who is awarded the contract. The term “bidder” is used to identify where specific responses to the RFP are required.

The Contractor must respond to each requirement or question and explain how it will fulfill each requirement. Attach any supplemental information and appropriately reference within your response.

IMPORTANT NOTE TO CONTRACTORS/BIDDERS: There are specific requirements for which acceptance must be simply acknowledged through a checkbox(es), and others that require further explanation. Click one checkbox and complete the entries as identified.

BACKGROUND

The Michigan Public Service Commission (MPSC or Commission) is a state agency housed under the Department of Licensing and Regulatory Affairs (LARA). The MPSC is tasked with regulatory responsibilities which include ensuring safe, reliable, and accessible energy and telecommunications services at reasonable rates. The MPSC regulates generation and distribution functions for seven investor-owned electric utilities, including Consumers Energy and DTE Electric, within Michigan.

On October 5, 2022, the Commission signed an [Order](#) in [Case No. U-21305](#) directing the Commission Staff to hire a consultant to perform an independent third-party audit and review of the distribution systems, including all equipment and operations, of Consumers Energy and DTE Electric (“the companies”).

SCOPE

The review must be comprehensive and must consist of an engineering audit including a review of internal policies, procedures, and management processes. The focus of the review must be on actions necessary to reduce the total number of outages and the duration of outages, and on the identification of needed improvements to safety particularly with respect to the potential for contact with the electrical distribution system by the public.

For both outages and safety topics, the MPSC requires a summary of the current state, a comparison to other similarly situated (size, climate, regulatory structure) utilities, details on best practices, and recommendations from the Contractor regarding actions each company may take to reduce the number of outages and their duration and/or to



improve safety, as well as the expected timeline for such measures to result in improvements to performance measurements including system average interruption duration index (SAIDI) and system average interruption frequency index (SAIFI) scores, and other industry-accepted metrics (CAIDI, ASAI, MAIFI, CEMI 0 through 10+, CELID8, CELID24, CELID48). If existing company plans will impact outage numbers, duration, or safety, including issues related to wire-down events, line worker safety, etc., the MPSC expects clarity on the impacts of these plans on outage and safety metrics, as well as a timeline when such impacts are expected.

The independent third-party audit of the two companies must have two parts as defined below in General Requirements. The Contractor must agree to audit both companies and conduct both parts of the audit. A Contractor may partner or subcontract with another contractor as needed to fulfill the intent of the project. The MPSC reserves the right to approve subcontractors.

Information available for use by the Contractor:

[Consumers Energy Service Area Map](#)

[DTE Electric Service Area Map](#)

Electrical Supply and Communication Lines and Associated Equipment ruleset:
https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1683_2017-007LR_AdminCode.pdf

The current Service Quality and Reliability Standards for Electric Distribution Systems can be found here:
https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=826_10792_AdminCode.pdf

The proposed updated Service Quality and Reliability Standards for Electric Distribution Systems can be found in the March 17, 2022 order in Case No. U-20629, which can be accessed here: <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/0688y000002M7wuAAC>

The latest distribution system plans can be found in Case No. U-20147, which can be accessed here: <https://mi-psc.force.com/s/case/500t0000009gHerAAE/in-the-matter-on-the-commissions-own-motion-to-open-a-docket-for-certain-regulated-electric-utilities-to-file-their-distribution-investment-and-maintenance-plans-and-for-other-related-uncontested-matters>. Consumers Energy's final plan was filed on June 30, 2021 and DTE Electric Company's final plan was filed on September 30, 2021.

Consumers Energy November 4, 2022 report filed in response to October 5, 2022 order in Case No. U-21305: <https://mi-psc.force.com/s/filing/a008y000002noL0AAI/u213050004>

DTE Electric November 4, 2022 report filed in response to October 5, 2022 order in Case No. U-21305: <https://mi-psc.force.com/s/filing/a008y000002nl2QAAQ/u213050003>



Consumers Energy annual power quality and electric reliability data Case No. U-16066: <https://mi-psc.force.com/s/global-search/16066>

DTE Electric annual power quality and electric reliability data Case No. U-16065: <https://mi-psc.force.com/s/global-search/16065>

Annual power quality and reliability reports Case No. U-12270: <https://mi-psc.force.com/s/case/500t0000008eeRgAAI/in-the-matter-on-the-commissions-own-motion-of-the-investigation-into-the-methods-to-improve-the-reliability-of-electric-service-in-michigan>

1. Requirements

1.1. General Requirements

The independent third-party audit must have two parts as outlined below. References to Part 1 and Part 2 of the audit throughout this Statement of Work is intended to distinguish between the two distinct portions of the overall audit and is not intended to indicate that these parts be conducted sequentially. Bidders may conduct Parts 1 and 2 in any order or in parallel. The State anticipates the audit to be completed within one year of the effective date of the contract.

- A. Contractor will develop a work plan including timeline with identified milestones. As part of the work plan, bidders should describe the sequencing of Parts 1 and 2 of the audit.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

- B. Bidders must identify what data, relevant to the scope of work relating to Part 1 and Part 2 of the audit, they already possess or have access to for use as reference points to assess and compare the companies' performance to other utilities.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

Bidder must describe how they comply with the above requirement(s):

C. Part 1

Part 1 will consist of a physical audit of the existing installed infrastructure to determine whether the existing installed infrastructure matches the company's records. This part will involve physical measurements of installed distribution infrastructure to ensure compliance with the company's engineering standards. Measurements will include a statistically significant sample of infrastructure at a variety of locations and considering a variety of types of distribution infrastructure to get a statistically relevant understanding of the state of the company's overall distribution system. This part will include a comparison of the condition of the company's distribution system to that of other utilities in similar climates.

1. Contractor will work with MPSC staff and the companies to identify a stratified statistical sample¹, with a statistically significant sample size, of infrastructure components based on the characteristics of the company's distribution system, including the vintage of the system.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

2. Contractor will make assessments and measurements of each infrastructure component as described below:
 - a. Inventory a stratified statistical sample, with a statistically significant sample size, of infrastructure components on the distribution system and assess their condition, age, product quality, and functionality to the company's records and engineering standards. In the process,
 - i. Identify distribution wire type, age, and location.
 - ii. Identify distribution circuit voltage, configuration (looped vs radial), and system type (delta vs wye).

¹ In statistics, stratified sampling is a method of sampling from a population which can be partitioned into subpopulations.

- iii. Determine the condition by age, visual inspection, and other appropriate tests of a statistically significant sample of infrastructure components.
- iv. Review and assess inspection methods utilized to determine when an asset has reached end of useful life or premature failure.
- v. Identify the asset maintenance cycle for a stratified sample of distribution system components and determine the effectiveness of those cycle lengths.
- b. Inventory a stratified statistical sample, with a statistically significant sample size, of infrastructure components in the inventory and assess the inventory product quality, condition, and functionality.
- c. Identify the service transformer sizes in kVA and the range of the number of customers served by each transformer size.
- d. Identify locations of service transformers serving the minimum, median, and maximum number of customers for each transformer size for residential and commercial customers.
- e. Identify the miles, location, and vintage of both underground and overhead facilities.
- f. Compare operations and maintenance costs of underground service and distribution lines to overhead service and distribution lines.
- g. Assess whether a statistically significant sample of the company's infrastructure is in compliance with parts one, two, and three and sections one, two, three, and nine of the national electrical safety code 2017 edition (ANSI-C2-2017), per rule 460.813.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

- 3. Contractor will compare the condition of the company's distribution system to that of other similarly situated utilities to the extent available. As part of this element, Contractors are expected to analyze and identify what constitutes "similarly situated utilities," taking into consideration geography, climate, system attributes (e.g., overhead/ underground lines; backlot/ front lot services; age of system; voltage levels; etc.), and other relevant elements.
 - a. Average age of infrastructure components, and average age of components when they are replaced.

- b. Compare the condition of the company's distribution system to a municipal utility in Michigan serving over 100,000 or more customers and two or more similarly situated investor-owned utilities in other states with similar climates who have one million or more customers.
- c. Compare the components installed underground to other similarly situated utilities.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s), including identifying what similarly situated utilities for which comparisons will be made.:	

4. Contractor will perform an analysis of the company's reliability metrics (SAIDI, SAIFI, CAIDI, ASAI, MAIFI, CEMI 0 through 10+, CELID8, CELID24, CELID48), including comparing the company's reliability metrics with those of utilities of similar size located in states with similar climates for the past 10 years. The result of this analysis must explain how and why Michigan utility performance differs from similarly situated utilities in other states.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s), including which state's will be used for comparison:	

D. Part 2

Part 2 will consist of an audit of each company's programs and processes to determine whether the existing programs and processes for emergency preparedness, storm restoration, distribution system maintenance, and investment are sufficient and equitable, and whether they properly plan for climate change and changing load profiles. This part will include a review of each company's engineering standards, as well as inspection and maintenance programs to ensure they meet the needs of the distribution system, now and into the future. It will include an audit of the accounting process for the distribution system to ensure costs are being accurately managed and recorded. It will also include a review of how the utility manages the operations of the

distribution system, including how maintenance prioritization is determined, how personnel are managed during outage recovery, and company management and internal policies and procedures regarding outages, distribution management, safety, and planning.

1. Contractor will review and assess the company's internal organization, staffing, spending approval processes, and decision-making processes related to the distribution system. Contractor must interview, as appropriate, company supervisors, managers, directors, vice presidents, and executive officers.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

2. Contractor will review and audit the company's emergency preparedness programs and processes, including but not limited to:
 - a. How company monitors incoming inclement weather and how far in advance weather is monitored.
 - b. How company pre-stages storm restoration assets and personnel.
 - c. How company secures wire down guard resources and communicates downed wire safety reminders to potentially affected areas.
 - d. How company coordinates mutual assistance.
 - e. How company interacts with first responders, state/local government officials and emergency managers in the hours leading up to an anticipated storm as well as during and after the storm.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

3. Contractor will review and audit storm restoration program and processes, including but not limited to:

- a. Understand how the company becomes aware of downed wires both during the storm and after, and the policy for guarding downed wires.
- b. Understand how the company prioritizes repairing downed wires.
- c. Understand how the company becomes aware of outages.
- d. Determine at what point the company considers themselves in active storm operations versus normal operations.
- e. Assess the company's performance toward complying with reliability and restoration metrics utilities must adhere to in the MPSC's rules and proposed rules.
- f. How post event learnings are captured and implemented for future events.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

4. Contractor will review and assess the planning, maintenance, and inspection processes and programs for the distribution system, including but not limited to:
 - a. Determine whether all appropriate organizations within the company are involved in the distribution planning process and their level of coordination.
 - b. Assess whether the company's future scenario modeling assumptions for distribution planning are appropriate including whether they properly plan for climate change, changing customer load profiles, and increased use of local distributed generation.
 - c. Compare the company's operations and maintenance (O&M) programs to other similarly situated utilities' O&M programs in terms of types of O&M programs, function, and efficacy of each program (e.g., inspection cycles, maintenance of equipment, and vegetation management), and cost of each program.
 - d. Compare the company's O&M to O&M program best practices as determined by the Contractor.
 - e. Identify how the company is utilizing distribution automation and other technology advancements, including Advanced Distribution Management Systems (ADMS), Distributed Energy Resource Management System (DERMS), or other grid modernization initiatives and identify how the company could better utilize distribution automation and management systems.

- f. Review and assess the company's engineering standards and compare to best practices as determined by the Contractor.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s). Also identify what similarly situated utilities for which comparisons will be made.:	

5. Contractor will review and assess the company's process for failure analysis investigations, including but not limited to:
- View the company's procedure for retaining failed components for future analysis.
 - Review and audit company's failure investigation processes and how the results are used to prioritize investments and improve O&M procedures. The review must include a comparison of these processes with other similarly situated utilities in other states.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s). Also identify what similarly situated utilities for which comparisons will be made.:	

6. Contractor will review the company's asset management program, including but not limited to:
- The company's internal systems for monitoring assets in the field and in inventory.
 - Assess the accuracy of the company's records, provide recommendations for improvement, and compare to inventory management best practices as determined by the Contractor.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
--------------------------	--

<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

7. Contractor will review and assess how the company prioritizes and selects infrastructure upgrade projects, including but not limited to:
- a. If there are trends or correlation in project selection and community characteristics.
 - b. The level of coordination with other infrastructure owners when prioritizing or selecting projects (i.e., municipalities, water utilities, gas utilities, telecommunications utilities). If coordination has occurred, quantify the savings achieved to the extent possible.
 - c. Compare the relative benefits and costs of different options to improve reliability, including grid hardening, tree trimming, other O&M, and conversion to higher voltage levels where applicable. Auditors must be aware of, review, and incorporate findings of the 4.8kV technical conference(s) to be conducted by DTE and Staff as ordered in Case No. U-20836 on November 18, 2022.
 - d. Identify locations within each company's distribution system where the cost of infrastructure upgrade projects may reduce total cost and/or increase customer benefit, even including any additional capital cost required, and quantify – to the extent practicable – the expected costs and benefits.
 - e. Compare the company's level of distribution system investment to those of other similarly situated utilities for the previous 10 years. Determine scope of financial investments made to distribution system in previous 10 years and projected 5 years. Identify variances in spend and reasoning why.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s). Also identify what similarly situated utilities for which comparisons will be made.:	

8. Contractor will review and audit company's management of distribution system maintenance programs and investment, including but not limited to:
- How the company prioritizes distribution system maintenance projects.
 - The company's decision-making process for shifting funds and resources between O&M programs.
 - Determine how O&M programs are structured to promote equitable maintenance to the system irrespective of geographic or demographic area.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

9. Contractor will review and assess how the company manages documents and ensures adequate training regarding distribution system maintenance, capital investment, safety, and reliability.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

10. Contractor will identify capital and O&M programs, and associated measures, each company may implement to reduce the number of outages and their duration and improve safety. For each program and measure identified, provide the expected timeline for the program or measure to result in improvements to performance measurements including SAIDI and SAIFI and industry-accepted metrics (CAIDI, ASAI, MAIFI, CEMI 0 through 10+, CELID8, CELID24, CELID48).

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

- E. If, in the course of providing the Contract Activities, Contractor is required to execute a non-disclosure agreement (NDA) with a utility, Contractor will provide a copy of any proposed NDA to the State for review and acceptance, or, at the State's sole discretion, Contractor will utilize an NDA provided by the State. Any NDA between Contractor and a utility must be reviewed and approved by the State prior to execution and must not restrict the ability of the Contractor to perform the audit under this Contract and share any information obtained through the audit with the State. The NDA must also provide that any information obtained through the audit process will be subject to the Michigan Freedom of Information Act (MCL 15.231 – 15.246) and may be disclosed in accordance with its terms.

1.2. Transition

Any and all documents needed by the state will be provided no longer than 30 days past the conclusion of the contract.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

2. Service Requirements

2.1. Timeframes

All Contract Activities must be delivered within one year from receipt of order. The receipt of order date is pursuant to the **Notices** section of the *Standard Contract Terms*.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

3. Acceptance

3.1. Final Acceptance

The contract will be complete upon acceptance of the final report for Part 1 and Part 2, and subsequent presentation to the Commission.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

4. Staffing

4.1. Contractor Representative

The Contractor must appoint one individual specifically assigned to State of Michigan accounts, who will respond to State inquiries regarding the Contract Activities, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 15 calendar days before removing or assigning a new Contractor Representative.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must identify its Contractor Representative:	

4.2. Customer Service Number

The Contractor must specify its telephone number for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8:00 am to 5:00 pm EST.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must identify its Customer Service Toll-Free Number:	

4.3. Key Personnel

The Contractor must appoint at least one (1) or more lead auditors for Part 1 and Part 2 of the audit who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 24 - 48 hours.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a résumé and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key

Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under the **Termination for Cause** section of the Standard Contract Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

- i. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30-calendar days before the Key Personnel's removal.
- ii. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30-calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30-calendar day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30-calendar days of shadowing will not exceed \$50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

- A.** The Contractor must identify all Key Personnel that will be assigned to this contract in the table below which includes the following:

1. Name and title of staff that will be designated as Key Personnel.
2. Key Personnel years of experience in the current classification.
3. Identify which of the required key personnel positions they are fulfilling.
4. Key Personnel's roles and responsibilities, as they relate to this RFP, if the Contractor is successful in being awarded the Contract. Descriptions of roles should be functional and not just by title.
5. Identify if each Key Personnel is a direct, subcontract, or contract employee.
6. Identify if each Key Personnel staff member is employed full-time (FT), part-time (PT) or temporary (T), including consultants used for the purpose of providing information for the proposal.
7. List each Key Personnel staff member's length of employment or affiliation with the Contractor's organization.
8. Identify each Key Personnel's percentage of work time devoted to this Contract.
9. Identify where each Key Personnel staff member will be physically located (city and state) during the Contract performance.

<Add more rows below as needed>

1. Name	2. Years of Experience in Current Classification	3. Role(s) / Responsibilities	4. Direct / Subcontract / Contract	5. % of Work Time	6. Physical Location

- B.** The Contractor must provide **detailed, chronological résumés** of all proposed Key Personnel, including a description of their work experience relevant to their purposed role as it relates to the RFP.

Qualifications will be measured by education and experience with particular reference to experience on projects similar to that described in the RFP.

Bidder must provide the résumés and information as required above as an attachment to this RFP labelled as Résumés – Person's name.

4.4. Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

Bidder must provide detailed information as required above – either in this response box or identified here as an attachment to this RFP labelled as Organizational Chart.

4.5. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- **Geographically Disadvantaged Business Enterprise Sub-Contractors:** If contractors plan to utilize subcontractors to perform more than 20% of the deliverables under this contract, at least 20% of that subcontracted work must be awarded to Michigan-based Geographically Disadvantaged Business Enterprises (GDBE). Contractor will submit a plan detailing all subcontractors to be used, including the percentage of the work to be done by each. Contractor must inform the State to the name and address of the GDBE, the percentage of the work they will complete, the total amount estimated to be paid to the GDBE, and provide evidence for their qualifications as a GDBE. If contractor cannot find GDBE subcontractors to meet this requirement they must provide reasoning and justification to receive an exemption from this requirement from the State. (Existing business relationships will not be an approved reason for this.)

GDBE definition: "Geographically-Disadvantaged Business Enterprise" means a person or entity that satisfies one or more of the following: (i) Is certified as a HUBZone Small Business Concern by the United States Small Business Administration. (ii) Has a principal place of business located within a Qualified Opportunity Zone within Michigan. (iii) More than half of its employees have a principal residence located within a Qualified Opportunity Zone within Michigan, or both.

Bidder must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities.	
The relationship of the subcontractor to the Bidder.	

Bidder must provide detailed information as requested in the above requirement(s).	
Whether the Bidder has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	
Of the total bid, the price of the subcontractor's work.	

Bidder must provide information based on the work performed by all subcontractors.	
Total percentage of work that will be performed by subcontractors.	
Total percentage of subcontracted work that will be performed by GDBE subcontractors:	

5. Project Management

5.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing tasks, milestones, timeline, and resources required.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must submit its project plan as described above:	

5.2. Meetings

The Contractor must attend the following meetings:

Part 1

- Contractor will attend a kick-off meeting to be held in person with MPSC Staff and the company(ies).



2. Contractor will meet with MPSC Staff biweekly virtually using Microsoft Teams.
3. Contractor will meet with the company(ies) as often as deemed necessary.
4. The State may request other meetings, as it deems appropriate.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

Part 2

1. Contractor will attend a kick-off meeting to be held in person with MPSC Staff and the company(ies).
2. Contractor will meet with MPSC Staff biweekly virtually using Microsoft Teams.
3. Contractor will meet with each company(ies) as often as deemed necessary.
4. The State may request other meetings, as it deems appropriate.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

5.3. Reporting

The Contractor must submit to the Program Manager or other identified MPSC Staff, the following written reports:

Part 1

1. Contractor will provide staff with weekly written reports due every Monday by 3:00 pm EST/EDT regarding the status of the project, including accomplishments, delays, and challenges.
2. Contractor will prepare a final draft report including audit findings, identified deficiencies, ways other similarly situated utilities have addressed similar deficiencies, and identified recommendations from the auditor. The draft report will be provided to the Commission and each company for review and comment. The Contractor will work with the Commission to incorporate comments received during the draft report review process into a final report. The final report will include an executive summary. A presentation of findings, deficiencies, and recommendations will be provided to the MPSC. The contract will be complete upon acceptance of the final report and subsequent presentation to the Commission.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
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<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must explain its reporting capabilities and any reporting that is included in its proposal:	
Bidder must provide samples of required reports as attachments to this RFP. List file names here.	

Part 2

1. Contractor will provide staff with weekly written reports due every Monday by 3:00 pm EST/EDT regarding the status of the project, including accomplishments, delays, and challenges.
2. Contractor will prepare a final draft report including audit findings, identified deficiencies, ways other similarly situated utilities have addressed similar deficiencies, and identified recommendations from the auditor. The draft report will be provided to the Commission and each company for review and comment. The Contractor will work with the Commission to incorporate comments received during the draft report review process into the final report. The final report will include an executive summary. A presentation of findings, deficiencies, and recommendations will be provided to the MPSC. The contract will be complete upon acceptance of the final report and subsequent presentation to the Commission.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must explain its reporting capabilities and any reporting that is included in its proposal:	
Bidder must provide samples of required reports as attachments to this RFP. List file names here.	

6. Pricing

6.1. Price Term

Pricing is firm for the entire length of the Contract.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

6.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

☐ I have reviewed the above requirement and agree with no exception.

☐ I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

7. Ordering

7.1. Authorizing Document

The appropriate authorizing document for the Contract will be a delivery order (DO).

☐ I have reviewed the above requirement and agree with no exception.

☐ I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

8. Invoice and Payment

8.1. Invoice Requirements

The Contractor will submit separate invoices for work on Consumers Energy and DTE Electric's audits individually. All invoices must include a written report detailing the work completed to-date, total hours spent per week by each personnel, any issues experienced, an updated timeline, and expected delays. Invoices must also specify if the work is being performed for Part 1 or Part 2 of the audit. These invoices must be submitted monthly. Overtime, holiday pay, and travel expenses will not be paid.

☐ I have reviewed the above requirement and agree with no exception.

☐ I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

Bidder must provide a sample invoice. If providing as a separate document, label as *Utility Audit Sample Invoice – Company Name*.

8.2. Payment Methods

The State will make payment for Contract Activities via Electronic Funds Transfer (EFT).

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

8.3. Procedure

Invoices and any corresponding documentation will be emailed to the Program Manager.

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

9. Service-Level Agreements (SLAs)

- A.** The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract.
- B.** The State reserves the right to reconsider or amend SLA amounts for split awards should they occur.
- C. Please Note:** Should bidders require clarification or have any questions with regard to the SLAs, they should submit them during the *Question and Answer Period* of this solicitation; please see the **Proposal Instructions** for the timeline.

Service Level Agreements for this Contract will be as follows:

SLA Metric 1. Meeting Attendance	
Definition and Purpose	Kick-off meeting and bi-weekly meeting attendance is essential to ensure audit progress is made and expectations are met.
Acceptable Standard	1. Kick off meeting: Attendance by all Contractor stakeholders. 2. Bi-weekly meeting: Attendance by Contractor key personnel or designee. The acceptable standard is 100% compliance
Credit Due for Failing to Meet the	1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year.

SLA Metric 1. Meeting Attendance	
Service Level Agreements	<p>2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year.</p> <p>Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.</p> <p>At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.</p>

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.

List all exception(s):

SLA Metric 2. Project Milestones	
Definition and Purpose	All identified project milestones will be met on time and to agreed upon standards between Contractor and the Program Manager.
Acceptable Standard	The acceptable standard is 100% compliance.
Credit Due for Failing to Meet the Service Level Agreements	<p>1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year.</p> <p>2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year.</p> <p>Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.</p> <p>At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.</p>

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

SLA Metric 3. Reporting	
Definition and Purpose	<p>Weekly written reports will be submitted to the Program Manager. Weekly reports will include information outlined in this SOW.</p> <p>The final report will be submitted to the Program Manager by the date identified and agreed upon by both the MPSC and the Contractor. The final report will include the information requested in this SOW.</p>
Acceptable Standard	<p>1. Weekly written reports: See section 5.3.</p> <p>2. Final report: Submitted on time.</p> <p>The acceptable standard is 100% compliance.</p>
Credit Due for Failing to Meet the Service Level Agreements	<p>1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year.</p> <p>2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year.</p> <p>Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.</p> <p>At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.</p>

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

SLA Metric 4. Monthly Billing	
Definition and Purpose	Per section 8.1 of this SOW, the Contractor will bill the MPSC monthly. Separate invoices will be submitted for work on Consumers Energy and DTE Electric's audits individually. All invoices will include a written report detailing the work completed to-date, total hours spent, any issues experienced, an updated timeline, and expected delays. Invoices must also specify if the work is being performed for Part 1 or Part 2 of the audit.
Acceptable Standard	<ol style="list-style-type: none"> 1. Invoices submitted on time monthly. 2. Invoices accurately detail work completed. <p>The acceptable standard is 100% compliance.</p>
Credit Due for Failing to Meet the Service Level Agreements	<ol style="list-style-type: none"> 1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. <p>Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.</p> <p>At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.</p>

<input type="checkbox"/>	I have reviewed the above requirement and agree with no exception.
<input type="checkbox"/>	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

Enter company name here

SCHEDULE B - PRICING

Request For Proposal No. 230000001370
Utility Distribution System Audit

1. The Contractor must provide a pricing schedule for the proposed Contract Activities using Microsoft Word or Excel; however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.
2. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State.
3. 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.

Quick payment terms: % discount off invoice if paid within days after receipt of invoice.

4. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

Utility Distribution System Audit – Part 1					
Schedule B.1 – Pricing Worksheet					
<u>CATEGORY – Key Personnel</u>					
Name	Position Title	Personnel Salary	Hourly Rate	Estimated Number of Hours	Total
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
Category Total					\$
<u>CATEGORY – Non-Key Personnel and Other / Administrative Personnel</u>					
Name	Position Title	Personnel Salary	Hourly Rate	Estimated Number of Hours	Total
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$
Category Total					\$
GRAND TOTAL					\$

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Enter company name here

SCHEDULE C - INSURANCE REQUIREMENTS

Request For Proposal No. 230000001370

1. **General Requirements.** Contractor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Contractor waives all rights against the State for such damages. Failure to maintain required insurance does not limit this waiver.
2. **Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by DTMB Enterprise Risk Management.
3. **Primary and Non-Contributory Coverage.** All policies for which the State of Michigan is required to be named as an additional insured must be on a primary and non-contributory basis.
4. **Claims-Made Coverage.** If any required policies provide claims-made coverage, Contractor must:
 - a. Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract;
 - b. Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract.
5. **Proof of Insurance.**
 - a. Insurance certificates showing evidence of coverage as required herein must be submitted to DTMB-RiskManagement@michigan.gov within 10 days of the contract execution date.
 - b. Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.
 - c. Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by DTMB Enterprise Risk Management.
 - d. All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).
 - e. The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification/authorization, and balance sheets.

- f. In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to DTMB Enterprise Risk Management no later than 5 business days following such cancellation or nonrenewal.
6. **Subcontractors.** Contractor is responsible for ensuring its subcontractors carry and maintain insurance coverage.
7. **Limits of Coverage & Specific Endorsements.**

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
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.	
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

8. **Non-Waiver.** This Schedule C is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract, including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State.

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and [Insert Company Name] (“**Contractor**”), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on September 1st, 2023 (“**Effective Date**”), and unless terminated, will expire August 31st, 2025 (the “**Term**”).

This Contract may be renewed for up to three additional one year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables (the “**Contract Activities**”) described in a Statement of Work, the initial Statement of Work is attached as Schedule A – Statement of Work. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities unless otherwise specified in a Statement of Work.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) assign to the State any claims 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; (i) comply with all State physical and IT security policies and standards which will be made available upon request; and (j) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail



without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
See Contract Administrator information shown below.	<div>[Name]</div> <div>[Street Address]</div> <div>[City, State, Zip]</div> <div>[Email]</div> <div>[Phone]</div>

3. **Contract Administrator.** The Contract Administrator, or the individual duly authorized for each party, is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Emily Fedewa 320 South Walnut Street Lansing, MI 48933 fedewae3@michigan.gov 517-897-7321	<div>[Name]</div> <div>[Street Address]</div> <div>[City, State, Zip]</div> <div>[Email]</div> <div>[Phone]</div>

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
Lynn Beck 7109 West Saginaw Hwy. Lansing, MI 48917 BeckL12@Michigan.gov 517-284-8247	<div>[Name]</div> <div>[Street Address]</div> <div>[City, State, Zip]</div> <div>[Email]</div> <div>[Phone]</div>

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

6. Insurance Requirements.

See Schedule C.

7. Reserved

8. Reserved.

9. Relationship of the Parties. The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

10. Intellectual Property Rights. If a Statement of Work requires Contractor to create any intellectual property, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

11. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

12. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.

13. Background Checks. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public

Act 427 of 2018. Upon request, or as may be specified in a Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

14. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

15. Change of Control. Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

16. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.

17. Acceptance. Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in a Statement of Work. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to



correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

18. Reserved.

19. Reserved.

20. Reserved.

21. Invoices and Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities provided as specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be

deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 22. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.
- 23. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 24. Termination for Cause.** (a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of any facility, data, or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; (iv) breaches any of its material duties or obligations under this Contract; or (v) fails to cure a breach within the time stated by the State in a notice of breach, if in its sole discretion the State has chosen to provide a time to cure. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- (b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract or (ii) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and

obligations of the parties will be limited to those provided in Section 25, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 25. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.
- 26. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 27. Return of State Property.** Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.

- 28. Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

- 29. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.
- 30. Limitation of Liability and Disclaimer of Damages.** **IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY**

CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

- 31. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, “**Proceeding**”) involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor’s viability or financial stability; or (2) a governmental or public entity’s claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 32. Reserved**
- 33. State Data.**
- a. Ownership.** The State’s data (“State Data,” which will be treated by Contractor as Confidential Information) includes: (a) the State’s data, user data, and any other data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information (“PII”) collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual’s social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother’s maiden name, email address, credit card information, or an individual’s name in combination with any other of the elements here listed; and, (c) protected health information (“PHI”) collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State.
 - b. Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; (c) keep and maintain State Data in the continental United States and (d) not use, sell,

rent, transfer, distribute, commercially exploit, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795.

- c. **Extraction of State Data.** Contractor must, within 5 business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. **Backup and Recovery of State Data.** Unless otherwise specified in a Statement of Work, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in a Statement of Work, Contractor must maintain a contemporaneous backup of State Data that can be recovered within 2 hours at any point in time.
- e. **Loss or Compromise of Data.** In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than 24 hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within 10 calendar days of the occurrence describing the

measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section 32 are to be considered direct damages and not consequential damages.

- f. State's Governance, Risk and Compliance (GRC) platform.** Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.

34. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.

- a. Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or

otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

35. Data Privacy and Information Security. [Read and delete: This section is only necessary when Contractor will have access to sensitive State Data. If the Contractor will not have access to sensitive State Data, delete all language in the section, including the section title, and replace with “Reserved.” If you have any questions about this section, contact Genevieve Hayes at 517-230-2817. NOTE: If this section is used, you must also use Section 32.]

- a. Undertaking by Contractor.** Without limiting Contractor’s obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor’s data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor.** No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State.** Without limiting any other audit rights of the State, the State has the right to review Contractor’s data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor’s data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor’s data privacy and information security program.
- d. Audit Findings.** Contractor must implement any required safeguards as identified by the State or by any audit of Contractor’s data privacy and information security program.
- e. State’s Right to Termination for Deficiencies.** The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

36. Reserved.

37. Reserved.

38. Records Maintenance, Inspection, Examination, and Audit. Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the

auditor general upon request, all records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 39. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.
- 40. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these

standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 41. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 42. Reserved.**
- 43. Reserved.**
- 44. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 45. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 46. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 47. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 48. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 49. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit

the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

- 50. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.
- 51. Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Document Title	Document Description
Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Insurance Requirements

- 52. Entire Agreement and Order of Precedence.** This Contract, which includes Statement of Work, and schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Statement of Work; (b) second, Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF



ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 53. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 54. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 55. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 56. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.


PROOF OF SERVICE

STATE OF MICHIGAN)

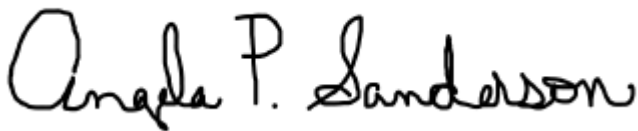
Case No. U-21305

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on August 30, 2023 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 30th day of August 2023.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case:**U-21305**

Name	On Behalf of	Email Address
Consumers Energy Company (1 of 2)	Consumers Energy Company	mpsc.filings@cmsenergy.com
Consumers Energy Company (2 of 2)	Consumers Energy Company	kelly.hall@cmsenergy.com
DTE Electric Company	DTE Electric Company	mpscfilings@dteenergy.com

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AEP Energy
Alger Delta Cooperative
Alpena Power
American Transmission Company
American Transmission Company
Bay City Electric Light & Power
Bishop Energy
Brauker, Linda
bp Energy Retail Company, LLC
Calpine Energy Solutions
Chappelle, Laura
Cherryland Electric Cooperative
Citizens Gas Fuel Company
City of Crystal Falls
City of Escanaba
City of Gladstone
City of Marshall
City of Portland
Cloverland
Cloverland
CMS Energy
Consumers Energy Company
Consumers Energy Company
Consumers Energy Company
Consumers Energy Company
Consumers Energy Company
Constellation Energy
Constellation Energy
Constellation New Energy
Dickinson Wright
Dillon Power, LLC
Direct Energy
Direct Energy
Direct Energy
DTE Energy
DTE Energy
DTE Energy
Eligo Energy MI, LLC
Energy Harbor
Energy International Power Marketing d/b/a PowerOne
Energy Michigan
ENGIE Gas & Power f/k/a Plymouth Energy

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meghan.tarver@teammidwest.com	Midwest Energy Cooperative
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tking@WPSCI.COM

Amanda@misostates.org

Deborah.e.erwin@xcelenergy.com

Michelle.Schlosser@xcelenergy.com

Presque Isle Electric & Gas Cooperative, INC

Realgy Corp.

Realgy Energy Services

Santana Energy

Santana Energy

Spartan Renewable Energy, Inc. (Wolverine Power Marketing Corp)

Stephenson Utilities Department

Superior Energy Company

Texas Retail Energy, LLC

Thumb Electric Cooperative

Upper Michigan Energy Resources Corporation

Upper Peninsula Power Company

Upper Peninsula Power Company

Village of Baraga

Village of Clinton

Volunteer Energy Services

Wabash Valley Power

Wolverine Power

Wood, Amanda

Xcel Energy

Xcel Energy