

REQUEST FOR PROPOSALS

Michigan Economic Development Corporation

Business Valuation Services

RFP-CASE-00032395

REMINDER

Please check your proposal to make sure you have included all of the specifications in this Request for Proposal. In addition, please submit an electronic version of each of the following:

- Price Proposal (Section II-B);
- Signed Independent Price Determination Certificate (Attachment B); and
- Conflicts of Interest Disclosure (if applicable) (Section II-G).

BIDDERS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS IN THE SUBJECT LINE OF YOUR EMAIL: *RFP-CASE-00032395 "Price or Technical Proposal" with Company Name, and "message 1 of 3" as appropriate if the bid consists of multiple emails.*

The MEDC will not respond to telephone inquiries, or visitation by Bidders or their representatives. Bidder's sole point of contact concerning the RFP is below and any communication outside of this process may result in disqualification.

Contracts and Grants
Michigan Economic Development Corporation
300 North Washington Square, 3rd Floor
Lansing, Michigan 48913
contracts&grants@michigan.org

IMPORTANT DUE DATES

- **February 1, 2013 at 3:00 p.m.:** Questions from potential Bidders are due via email to contracts&grants@michigan.org. Please note: The Michigan Economic Development Corporation ("MEDC") will not respond to questions that are not received by the above date and time. In addition, questions that are phoned, faxed or sent through regular mail will not be accepted.
- **February 5, 2013 by close of business:** Responses to all qualifying questions will be posted on the MEDC's website, www.michiganadvantage.org/2013-Business-Valuation-Services-RFP
- **February 8, 2013 at 3:00 p.m.:** Electronic versions of your Proposal due to the MEDC via email to contracts&grants@michigan.org. **Proposals will not be accepted via U.S. mail or any other delivery method.**

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REQUEST FOR PROPOSAL
Business Valuation Services
RFP-CASE-00032395

This Request for Proposals ("RFP") is issued by the Michigan Economic Development Corporation (the "MEDC"), Contracts and Grants Unit ("C&G"). C&G is the sole point of contact with regard to all bidding and contractual matters relating to the services described in this RFP. C&G is the only office authorized to change, modify, amend, alter, clarify, etc. the specifications, terms and conditions of this RFP and any contract(s) awarded as a result of this RFP (the "Contract"). Contracts and Grants will remain the SOLE POINT OF CONTACT throughout the bidding process. ***The MEDC will not respond to telephone inquiries, or visitation by Bidders or their representatives. Bidder's sole point of contact concerning the RFP is below and any communication outside of this process may result in disqualification.***

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Michigan Economic Development Corporation
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Lansing, Michigan 48913
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SECTION I
WORK STATEMENT

A) PURPOSE

The MEDC and the MSF are seeking business valuation services to assist in the management of the portfolio of early stage companies. The MEDC is requesting pricing proposals from interested parties regarding services to conduct business valuations on early stage technology companies. Pricing proposals should be quoted at a fixed price per valuation per company. The MEDC anticipates conducting 1-5 valuations on an annual basis. If you provide various levels of valuation services with different deliverables and timelines related to the various levels, include all levels. A table is provided in Section II B. for this information.

B) BACKGROUND

The 21st Century Jobs Fund was created to reshape and diversify Michigan's economy by sparking new investments to rapidly create companies and jobs. The 21st Century Jobs Fund is overseen by the Michigan Strategic Fund ("MSF"). The Michigan Economic Development Corporation ("MEDC") provides administrative services to the MSF for the 21st century Jobs Fund.

In 2006 and 2008, business plan competitions were held in an effort to encourage the development and commercialization of competitive-edge technologies. The 21st Century Jobs Fund provided funding to a number of companies in the following sectors: Life Sciences, Alternative Energy, Advanced Automotive, Manufacturing and Materials and Homeland Security and Defense, as well as, advanced computing and electronic device technology, design, engineering, testing, diagnostics, or product research and development as it related to any of the competitive-edge technologies. The MEDC

Portfolio Management Team now manages, on behalf of the MSF, the 21st Century Jobs Fund investments in these companies, many of which are early stage technology companies.

C) QUALIFICATIONS

Companies that have expertise in early stage technology company valuation practices in the following industries: advanced automotive manufacturing and materials technology, homeland security and defense technology, life sciences technology, alternative energy, information technology and agricultural processing.

SECTION II PROPOSAL FORMAT

To be considered, each Bidder must submit a COMPLETE proposal in response to this RFP using the format specified. Bidder's proposal must be submitted in the format outlined below. There should be no attachments, enclosures, or exhibits other than those required in the RFP or considered by the Bidder to be essential to a complete understanding of the proposal. Each section of the proposal should be clearly identified with appropriate headings:

A) TECHNICAL PROPOSAL

1. Business Organization and History – State the full name, address, and phone and facsimile number of your organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation; if as a corporation, include the state in which it is incorporated. If appropriate, the proposal must state whether the organization is licensed to operate in the State of Michigan.
2. Statement of the Project – State in succinct terms your understanding of the project presented by this RFP.
3. Narrative – Include a narrative summary description of the proposed effort and of the services(s)/products(s) that will be delivered.
4. Prior Experience – Describe the prior experience of your organization which you consider relevant to the successful accomplishment of the project defined in this RFP. Include sufficient detail to demonstrate the relevance of such experience.

The MEDC may evaluate the Bidder's prior performance with the MEDC, and prior performance information may be a factor in the award decision.

5. Project Staffing – The Bidder must be able to staff a project team which possesses talent and expertise in the field of the requirements of this RFP. Identify a Project Manager and staff assigned by name and title. Include biographies, experience and any other appropriate information regarding the work team's qualification for this initiative. Indicate where the project team will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the work. Indicate the amount of dedicated management time for the Bidder's Project Manager and other key individuals.

Please Note: The MEDC further reserves the right to interview the key personnel assigned by the Contractor to this project and to recommend reassignment of personnel deemed unsatisfactory.

6. Subcontractors – List here all subcontractors that will be engaged to accomplish the project described in this RFP; include firm name and address, contact person and complete description of work to be subcontracted. Include descriptive information concerning subcontractor's organization and abilities. Also, the information provided in response to A-5, above, should include detailed information about each potential subcontractor.

7. Bidder's Authorized Expediter – Include the name and telephone number of person(s) in your organization authorized to expedite any proposed contract with the MEDC.
8. Additional Information and Comments – Include any other information that is believed to be pertinent, but not specifically asked for elsewhere.

B) PRICE PROPOSAL

Using the table below, provide the pricing information and engagement levels for all firms/persons named in your Project Proposal to demonstrate the reasonableness of your Price Proposal. Pricing should be on a per company/per valuation basis.

The MEDC is exempt from federal excise tax, and state and local sales taxes. The Price Proposal should not include taxes.

Bidders Please Note: Rates quoted in response to this RFP are firm for the duration of the Contract; no price increase will be permitted.

Fixed Fee	Hourly Fee	Level of Analysis	Type of Deliverable	Time to Deliver

C) PROPOSAL SUBMITTAL

Submit electronic versions of this Price proposal to the MEDC via email to contracts&grants@michigan.org not later than **3:00 p.m. on February 8, 2013**. Responses can be a maximum of 10 pages, utilizing ten (10) point font or greater, submitted as a single .PDF file. The MEDC has no obligation to consider any proposal that is not timely received. **Proposals will not be accepted via U.S. mail or any other delivery method.**

BIDDERS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS IN THE SUBJECT LINE OF YOUR EMAIL: *RFP-CASE-00032395 "Price or Technical Proposal" with Company Name, and "message 1 of 3" as appropriate if the bid consists of multiple emails.*

SECTION III RFP PROCESS AND TERMS AND CONDITIONS

A) **PRE-BID MEETING/QUESTIONS**

A pre-bid meeting will not be held. Questions from Bidders concerning the specifications in this RFP must be received via e-mail no later than **3:00 pm on February 1, 2013**. Questions must be submitted to:

Contracts and Grants
contracts&grants@michigan.org

B) **PROPOSALS**

To be considered, Bidders must submit a complete response to this RFP, using the format provided in Section III of this RFP, by **3:00 p.m. on February 8, 2013**. No other distribution of proposals is to be made by the Bidder. Responses can be a maximum of 10 pages, utilizing ten (10) point font or greater, submitted as a single .PDF file.

The proposal must include a statement as to the period during which it remains valid; this period must be at least ninety (90) days from February 8, 2013. The rates quoted in the Price Proposal must remain firm for the period indicated in Section II.

C) **ECONOMY OF PREPARATION**

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Bidder's ability to meet the requirements of the RFP. Emphasis should be on completeness and clarity of content.

D) **SELECTION CRITERIA**

Responses to this RFP will be evaluated based upon a three-step selection process. The proposal must address the requirements described in Section II of this RFP.

The first step is an evaluation of which proposals satisfactorily meet the requirements of this RFP as stated in Section II.

1) **Step I – Initial evaluation for compliance**

- a) *Proposal Content* – Contracts and Grants will screen the proposals for technical compliance to include but not limited to:
 - Timely submission of the proposal
 - Proposal signed physically or electronically by an official of the Bidder authorized to bind the Bidder to its provisions.

2) Step II – Criteria for Satisfactory Proposals

- a.) During the second step of the selection process, proposals will be considered by a Joint Evaluation Committee (“JEC”) comprised of individuals selected by the MEDC. Only those proposals that satisfy the requirements described in this RFP, as determined in the sole discretion of the JEC, will be considered for evaluation in Step II. The JEC reserves the right to request additional information from any Bidder.
- b.) *Competence, Experience and Staffing Capacity* – The proposal should indicate the ability of the Bidder to meet the requirements of this RFP, especially the time constraints, quality, and recent projects similar to that described in this RFP. The proposal should indicate the competence of the personnel whom the Bidder intends to assign to the project, including education and experience, with particular reference to experience on projects similar to that described in this RFP and qualifications of Bidder’s Project Manager and the Project Manager’s dedicated management time, as well as that of other key personnel working on this project.

		<u>Weight</u>
1.	Bidder Information	25
2.	Previous Experience	25
3.	Staffing	25
4.	Pricing and Deliverables	25
	TOTAL	100

- c.) During the JEC’s review, Bidders may be required to make oral presentations of their proposals to the JEC. These presentations provide an opportunity for the Bidders to clarify the proposals. The MEDC will schedule these presentations, if required by the JEC.
- d.) Only those proposals receiving a score of **80 points or more** in the technical proposal evaluation will have their pricing evaluated to be considered for award.

1) Step III – Criteria for Satisfactory Price Proposal

- a.) Based on what is in the best interest of the MEDC, the MEDC will award the Contract considering value, quality, and the ability to meet the objectives of this RFP, of proposals that were approved as a result of this two-step evaluation process.
- b.) The MEDC reserves the right to consider economic impact on the State when evaluating proposal pricing. This includes, but is not limited to: job creation, job retention, tax revenue implications, and other economic considerations.
- c.) The award recommendation will be made to the responsive and responsible Bidder who offers the best value to the MEDC and the State of Michigan. Best value will be determined by the Bidder meeting the minimum point threshold and offering the *best proposal that meets the objectives of the RFP*.
- d.) The MEDC reserves the right to award to another “best value” contractor in case the original Awardee does not accept the award.

E) BIDDERS COSTS

The MEDC is not liable for any costs incurred by any Bidder prior to signing of the Contract by all parties.

F) TAXES

The MEDC may refuse to award a contract to any Bidder who has failed to pay any applicable taxes or if the Bidder has an outstanding debt to the State or the MEDC.

Except as otherwise disclosed in an exhibit to the Proposal, Bidder certifies that all applicable taxes are paid as of the date the Bidder's Proposal was submitted to the MEDC and the Bidder owes no outstanding debt to the State or the MEDC.

G) CONFLICT OF INTEREST

The Bidder must disclose, in an exhibit to the proposal, any possible conflicts of interest that may result from the award of the Contract or the services provided under the Contract.

Except as otherwise disclosed in the proposal, the Bidder affirms that to the best of its knowledge there exists no actual or potential conflict between the Bidder, the Bidder's project manager(s) or its family's business or financial interests ("Interests") and the services provided under the Contract. In the event of any change in either Interests or the services provided under the Contract, the Bidder will inform the MEDC regarding possible conflicts of interest which may arise as a result of such change and agrees that all conflicts shall be resolved to the MEDC's satisfaction or the Bidder may be disqualified from consideration under this RFP. As used in this Section, "conflict of interest" shall include, but not be limited to, the following:

1. Giving or offering a gratuity, kickback, money, gift, or any thing of value to a MEDC official, officer, or employee with the intent of receiving a contract from the MEDC or favorable treatment under a contract;
2. Having or acquiring at any point during the RFP process or during the term of the Contract, any contractual, financial, business or other interest, direct or indirect, that would conflict in any manner or degree with Bidder's performance of its duties and responsibilities to the MEDC under the Contract or otherwise create the appearance of impropriety with respect to the award or performance of the Contract; or
3. Currently in possession of or accepting during the RFP process or the term of the Contract anything of value based on an understanding that the actions of the Bidder or its affiliates or Interests on behalf of the MEDC will be influenced.

H) BREACH OF CONTRACT

Except as otherwise disclosed in an exhibit to Bidder's proposal, Bidder is not in material default or breach of any contract or agreement that it may have with the State of Michigan or any of its departments, commissions, boards or agencies, or any other public body in the State of Michigan. Further, Bidder represents and warrants that it has not been a party to any contract with the State or any public body that was terminated within the previous five (5) years because the Bidder failed to perform

or otherwise breached an obligation of such contract.

I) DISCLOSURE OF LITIGATION

Except as otherwise disclosed in an exhibit to Bidder's proposal, there is no criminal litigation, investigations or proceedings involving the Bidder (and each subcontractor, if subcontractors will be used to provide the goods/services requested under this RFP) or any of the Bidder's officers or directors or any litigation or proceedings under the Sarbanes-Oxley Act. In addition, Bidders must disclose in the exhibit requested under this Section of the RFP any civil litigation, arbitration or proceeding to which the Bidder (or, to the extent Bidder is aware, any subcontractor) is a party and which involves: (1) disputes that might reasonably be expected to adversely affect the viability or financial stability of the Bidder (or subcontractor); or (2) a claim or written allegation of fraud or breach of contract against Bidder (or, to the extent Bidder is aware, subcontractor), by a governmental or public entity arising out of their business dealings with governmental or public entities. Details of any settlements which Bidder is prevented from disclosing under the terms of the settlement may be annotated as such.

J) FALSE INFORMATION

If the MEDC determines that a Bidder purposefully or willfully submitted false information in response to this RFP, the Bidder will not be considered for an award and any resulting Contract that may have been executed may be terminated.

K) DISCLOSURE

All Bidders should be aware that proposals submitted to the MEDC in response to this RFP may be subject to disclosure under the provisions of Public Act 442 of 1976, as amended, known as the Freedom of Information Act ("FOIA"). Accordingly, confidential information should be excluded from Bidders' proposals. Bidders, however, are encouraged to provide sufficient information to enable the MEDC to determine the Bidder's qualifications and to understand or identify areas where confidential information exists and could be provided. The FOIA also provides for the complete disclosure of the Contract and any attachments or exhibits thereto.

L) PRICES HELD FIRM

LENGTH OF TIME PRICES ARE TO BE HELD FIRM: All rates quoted in Bidder's response to this RFP will be firm for the duration of the Contract. No price changes will be permitted. IN THE EVENT THAT PROPOSED CHANGES ARE NOT ACCEPTABLE TO THE MEDC, THE CONTRACT SHALL BE TERMINATED AND THE MODIFIED CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING.

M) BEST AND FINAL OFFER

At any time during the evaluation process, the JEC may request a Best and Final Offer (BAFO) from any Bidder. This will be the final opportunity for a Bidder to provide a revised proposal. The scope of the changes allowed in the BAFO will be published as part of the issuance of the BAFO request.

Bidders are cautioned to propose the best possible offer at the outset of the process, as there is no guarantee that any Bidder will be allowed an opportunity to engage in Pricing Negotiations or requested to submit a Best and Final Offer.

N) CLARIFICATION/CHANGES IN THE RFP

Changes made to the RFP as the result of responses made to qualifying questions or concerns will be put in writing to each Bidder. If the selection process described in the RFP does not lead to a viable award recommendation, significant deficiencies are identified, or changes in the technical requirements or specifications are needed, the JEC, at its discretion, may prepare a Deficiency Report and Clarification Request (DR/CR) for each proposal determined to be in the competitive range. The DR/CR may include any changes to the original proposal to address the listed deficiencies, including alterations to the original cost proposal to address correction of the deficiencies. Bidders will be allowed to respond in writing to the DR/CR with a revised proposal. The DR/CR response must be submitted by the deadline established by JEC.

After reviewing the DR/CR, the JEC will re-evaluate the proposals using the original evaluation method. If an alteration to the originally published evaluation criteria is to be made, the changes in the criteria will be published to all Bidders as part of the issuance of the DR/CR.

O) ELECTRONIC BID RECEIPT

ELECTRONIC VERSIONS OF EACH OF YOUR TECHNICAL AND PRICE PROPOSALS SENT SEPARATELY MUST BE RECEIVED AND TIME-STAMPED BY THE MEDC TO contracts&grants@michigan.org, ON OR BEFORE **3:00 p.m. on February 8, 2013**. Bidders are responsible for timely submission of their proposal. THE MEDC HAS NO OBLIGATION TO CONSIDER ANY PROPOSAL THAT IS NOT RECEIVED BY THE APPOINTED TIME.

P) RESERVATION OF MEDC DISCRETION

Notwithstanding any other statement in this RFP, the MEDC reserves the right to:

- 1) reject any and all proposals;
- 2) waive any errors or irregularities in the bidding process or in any proposal;
- 3) rebid the project;
- 4) negotiate with any Bidder for a reduced price, or for an increased price to include any alternates that the Bidder may propose;
- 5) reduce the scope of the project, and rebid or negotiate with any Bidder regarding the revised project; or
- 6) defer or abandon the project.

The MEDC's decision is final and not subject to appeal. Any attempt by an applicant, collaborating entity, or other party of interest to the project to influence the awards process, to appeal, and/or take any action, including, but not limited to, legal action, regarding the proposal or awards process in general may result in the applicant's disqualification and elimination from the award process.

Q) BID PROTEST PERIOD

If a Bidder wishes to initiate a protest of the award recommendation, the Bidder must submit a protest in writing by 5:00 p.m. within (10) ten calendar days from the date of the notice of award sent by the MEDC. The written protest should include the RFP number, clearly state the facts believed to

constitute an error in the award recommendation, and describe the desired remedy. Only the information provided within the protest period will be considered in arriving at a decision. The MEDC is not required to take into consideration any material filed by any party after the protest deadline. The MEDC's CEO or designee will provide a written decision to the protesting party after investigating the matter or, if more information is needed, will schedule an informal meeting before issuing a decision. This decision is final.

To maintain the integrity of the procurement process and to ensure that procurements are received without undue delay, protests requesting a waiver of the following omissions and requirements cannot be granted:

1. Failure of a Bidder to properly complete sealed bid return envelope instructions;
2. Failure of a Bidder to submit the Bid by the due date and time;
3. Failure of a Bidder to provide samples, descriptive literature or other required documents by the date and time specified;
4. Failure of a Bidder to submit a protest within the time stipulated in the notice to award or as determined by the MEDC.

In fairness to Bidders who meet specifications and to prevent delays in procurement, the MEDC will not withdraw an award or re-evaluate bids when a protest maintains that the RFP specifications were faulty or that a bid exceeding specifications provided a better value than a lower bid meeting specifications.

R) JURISDICTION

In the event that there are conflicts concerning this RFP that proceed to court, jurisdiction will be in a Michigan court of law. Nothing in this RFP shall be construed to limit the rights and remedies of the MEDC that are otherwise available.

SECTION IV CONTRACTUAL TERMS AND CONDITIONS

A) CONTRACT TERMS AND CONDITIONS

- 1) The Contract – The proposal selected will be subject to the terms and conditions of the MEDC's Professional Services Contract (the "Contract") upon execution of the Contract by the MEDC and Bidder. The standard terms and conditions of the Contract are attached to this RFP as Attachment A.
- 2) Term of Work – It is estimated that the activities in the proposed Contract will cover the period March 1, 2013 through December 31, 2013.
- 3) Modification of Service – The MEDC reserves the right to modify the requested services during the course of the Contract. Such modifications must be made in writing and may include the addition or deletion of tasks or any other modifications deemed necessary. Any changes in pricing proposed by the bidder resulting from the requested changes are subject to acceptance by the MEDC. Changes may be increases or decreases.

In the event changes are not acceptable to the MEDC, the Contract shall be subject to competitive bidding based upon the new specifications.

- 4) Subcontracting – The MEDC reserves the right to approve any subcontractors for the Contract and to require the bidder, upon award of the Contract, to replace subcontractors that the MEDC finds to be unacceptable.
- 5) Award of Contract – The MEDC reserves the right to award all or any part of this RFP and, based on what is in the best interest of the MEDC, the MEDC will award the Contract considering price, value and quality of the bids.

B) CONTRACTOR RESPONSIBILITIES

The selected Bidder will be required to assume responsibility for all contractual activities offered in this RFP whether or not the Bidder performs them. Further, the MEDC will consider the selected Bidder to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.

C) ACCEPTANCE OF PROPOSAL CONTENT

If awarded a Contract, the contents of this RFP will become contractual obligations. The following constitute the complete and exclusive statement of the agreement between the parties as it relates to this transaction:

- 1) This RFP (including subsequent written clarification provided in response to questions raised by email) and any Addenda thereto; and
- 2) Final Executed Contract.

In the event of any discrepancies between the above documents, the final executed Contract shall control. Failure of the successful Bidder to accept these obligations may result in cancellation of the award.

D) PROJECT CONTROL AND REPORTS

1) Project Control

- a) The selected Bidder (the "Contractor") will carry out this project under the direction and control of the Business Support Unit of the MEDC.
- b) The MEDC will appoint a Contract Manager for this project. Although there will be continuous liaison with the Contractor team, the Contract Manager will meet with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
- c) The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated which should be brought to the attention of the Contract Manager and notification of any significant deviation from previously agreed upon work plans.
- d) Within five (5) working days of the execution of the Contract, the Contractor will submit a work plan to the Contract Manager for final approval. This work plan must be in agreement with Section III-A of this RFP as proposed by the Bidder and accepted by the MEDC for contract, and must include the following:
 - (i) The Contractor's project organizational structure.
 - (ii) The Contractor's staffing table with names and titles of personnel assigned to the project. This must be in agreement with staffing of the accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the MEDC.
 - (iii) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
 - (iv) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

(remainder of page intentionally left blank)

ATTACHMENT A

PROFESSIONAL SERVICES CONTRACT **TERMS AND CONDITIONS**

The Michigan Economic Development Corporation (the "MEDC") enters into a binding agreement for professional services (the "Agreement") with CONTRACTOR (the "Contractor"). The MEDC and Contractor shall sometimes be referred to in this Agreement individually as a "Party" or collectively as "Parties."

Contractor: Name
 Address
 Address

Federal I.D. No: xx-xxxxxxx

I. NATURE OF SERVICES

Contractor will assist in the management of the portfolio of early stage companies.

II. PERFORMANCE SCHEDULE

Starting Date: March 1, 2013

Ending Date: December 31, 2013

The term of this Agreement (the "Term") shall begin on the Starting Date and end on the Ending Date, unless terminated earlier, as permitted under Section V(J) of this Agreement.

III. COMPENSATION INFORMATION

- A) The MEDC agrees to pay Contractor an amount not to exceed \$XX.XX during the Term. This amount includes all embedded expenses.
- B) Payment under this Agreement shall be made by the MEDC to Contractor upon receipt and approval by the Contract Manager of Contractor's billing statement stating that the work for which payment is requested has been appropriately performed. Contractor shall provide the Contract Manager with Contractor's billing statement on a monthly basis.
- C) All billing statements must reflect actual work done. The specific details of billing statements and payments will be agreed upon between the Contract Manager and the Contractor after the Agreement has been signed and accepted by both the Contractor and the MEDC. Payment of the final 15% of the Contract amount shall be made only after the satisfactory completion of the required work, including all reports, and the submission of the final invoice.
- D) Changes in the budget will be allowed only upon prior review and written approval by the Contract Manager.
- E) Contractor's billing statement(s) may be subject to a final audit prior to the release of final payment.

IV. MEDC CONTRACT MANAGER

Contractor should communicate with the following MEDC representative or designee regarding this Agreement:

Denise Graves
Michigan Economic Development Corporation
300 N. Washington Square
Lansing, Michigan 48913

V. TERMS AND CONDITIONS

A) Contractor Duties

- 1) Contractor agrees to undertake, perform, and complete the services described in Exhibit A, which is incorporated herein by reference.
- 2) Within seven (7) business days of the last business day of each month, the Contractor will provide a progress report to the MEDC Contract Manager. The progress report must contain a brief summary of the work accomplished during that month; the work to be accomplished during the subsequent month; and any problems, real or anticipated which should be brought to the attention of the MEDC Contract Manager. Further, this report must provide notice of any significant deviation from previously agreed upon work plans.

B) Independent Contractor

Contractor will act as an independent contractor under this Agreement, and neither Contractor nor any employee or agent or contract personnel of Contractor is, or shall be deemed to be, an employee of the MEDC due to this Agreement and the relationship between Contractor and MEDC. In its capacity as an independent contractor, Contractor agrees to and represents the following:

- 1) Contractor will provide the services under this Agreement free from the direction or control of the MEDC as to means, manners, and methods of performance;
- 2) Contractor has the right and does fully intend to perform services for third parties during the Term;
- 3) Contractor acknowledges that any work product developed by Contractor in performance of this Agreement shall be the sole property of the MEDC and the MEDC shall have the right to copyright or otherwise protect its rights in and ownership of the work product;
- 4) The services required by this Agreement shall be performed by Contractor, or Contractor's employees or contract personnel, and the MEDC shall not hire, supervise, or pay any assistants to help Contractor;
- 5) Neither Contractor nor Contractor's employees or contract personnel shall receive any training from the MEDC in the professional skills necessary to perform the services

required by this Agreement;

- 6) Neither Contractor nor Contractor's employees or contract personnel shall be required by the MEDC to devote full time to the performance of the services required by this Agreement; and

- 7) Contractor does not receive the majority of its annual compensation from the MEDC.

The Parties acknowledge and agree that the MEDC is entering into this Agreement with reliance on the representations made by Contractor relative to its independent contractor status.

C) Permits and Licenses

Contractor declares that Contractor has complied with all federal, state and local laws requiring any business permits, certificates or licenses required to carry out the services to be performed under this Agreement, and Contractor will maintain those permits, certificates and/or licenses throughout the Term.

D) Materials

Contractor will furnish all materials, equipment and supplies used to provide the services required by this Agreement.

E) State and Federal Taxes

The MEDC will not:

- 1) Withhold FICA (Social Security and Medicare taxes) from Contractor's payments or make FICA payments on Contractor's behalf; or
- 2) Make state or federal unemployment compensation contributions on Contractor's behalf, or withhold state, federal or local income tax from Contractor's payments.

Contractor shall pay all taxes incurred while performing services under this Agreement, including, but not limited to all applicable income taxes. If requested by the MEDC, Contractor shall provide the MEDC with proof that such payments have been made.

F) Fringe Benefits

Contractor understands that neither Contractor nor Contractor's employees or contract personnel are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the MEDC.

G) Workers' Compensation

The MEDC shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees. If Contractor hires employees to perform any work under this Agreement, Contractor shall cover them with workers' compensation insurance and shall maintain such insurance during the Term. The MEDC may, in its discretion, require Contractor to provide evidence of such coverage.

H) Unemployment Compensation

The MEDC shall make no state or federal unemployment compensation payments on behalf of Contractor or Contractor's employees or personnel. Contractor will not be entitled to these benefits in connection with work performed under this Agreement. If Contractor files a petition for and receives unemployment compensation, the total amount of unemployment compensation awarded to and received by Contractor shall be deducted from and be an offset against the amount of compensation due and payable to Contractor by the MEDC under this Agreement.

I) Access to Records

During the Term, and for seven (7) years after the Ending Date, Contractor shall maintain reasonable records, including evidence that the requested services actually were performed and the identity of all individuals paid for such services, and shall allow access to those records by the MEDC or its authorized representative at any time during this period.

J) Termination

Either Party may terminate its obligations under this Agreement by giving the other Party thirty (30) calendar days prior written notice of such termination.

The MEDC may immediately terminate this Agreement upon written notice to Contractor if Contractor materially breaches its obligations under this Agreement or engages in any conduct which the MEDC, in its sole discretion, determines has or could have an adverse impact on the State of Michigan's (the "State") or the MEDC's reputation or interests. In addition, the MEDC may immediately terminate this Agreement upon written notice to Contractor, without further liability to the MEDC or the State, its departments, agencies, and employees, if Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense relating to a State, public, or private contract or subcontract; or convicted of a criminal offense including, but not limited to, any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State employees; convicted under state or federal antitrust statutes; or convicted of any other criminal offense which, in the sole discretion of the MEDC, reflects on Contractor's business integrity.

Contractor acknowledges that MEDC's performance of its payment obligation is dependent upon the MEDC Executive Committee's continued approval of funding and/or the MEDC's continued receipt of State funding. In the event that the State Legislature, the State Government or any State official, public body corporate, commission, authority, body or employees, including the MEDC Executive Committee: (a) takes any action which fails to provide, terminates or reduces the funding that is related to the source of funding for this Agreement; or (b) takes any action that is unrelated to the source of funding for this Agreement, but affects the MEDC's ability to perform obligations under this Agreement, the MEDC may terminate this Agreement by providing thirty (30) calendar days notice prior to the effective date of cancellation. In the event, however, that the action of the State Legislature, the State of Michigan or MEDC's Executive Committee results in an immediate absence or termination of funding, this Agreement may be terminated effective immediately upon delivery of notice to the Contractor. In the event of immediate termination of funding, the MEDC will make payment through the effective date of termination for any undisputed services rendered and expenses incurred.

The MEDC shall have no obligation to Contractor for any fees or other payments incurred in

connection with this Agreement after the effective date of termination. Upon termination, all work product prepared or produced by Contractor pursuant to this Agreement shall be immediately delivered to the MEDC. Payment for any undisputed services rendered and expenses incurred through the effective date of termination will then promptly be made by the MEDC.

K) MEDC Employees

Contractor will not hire any employee of the MEDC to perform any services covered by this Agreement without prior written approval from the Chief Executive Officer of the MEDC.

L) Confidential Information

Except as required by law, Contractor shall not use or disclose, either before, during or after the Term, any proprietary or confidential information, including, but not limited to, applications, business bids, business plans, economic development analyses, computer programs, databases and all materials furnished to Contractor by the MEDC (collectively, "Confidential Information") without the prior written consent of the MEDC. Confidential Information does not include information obtained by Contractor from third party sources; that is already in the possession of, or is independently developed by, Contractor; that becomes publicly available other than through breach of this Paragraph; or, is released with the prior written consent of the governmental entity or entities that provided the Confidential Information to Contractor. Contractor acknowledges that all information provided by the MEDC in connection with Contractor's duties under this Agreement shall be treated as Confidential Information unless otherwise stated in this subsection.

M) Conflict of Interest

Except as has been disclosed to the MEDC, Contractor affirms that neither the Contractor, nor its Affiliates or their employees has, shall have, or shall acquire any contractual, financial business or other interest, direct or indirect, that would conflict in any manner with Contractor's performance of its obligations under this Agreement or otherwise create the appearance of impropriety with respect to this Agreement.

Contractor further affirms that neither Contractor nor any affiliates or their employees has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or its affiliates or either's employees on behalf of the MEDC would be influenced. Contractor shall not attempt to influence any MEDC employee by the direct or indirect offer of anything of value. Contractor also affirms that neither Contractor, nor its Affiliates or their employees has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or its Affiliate, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

In the event of change in either the interests or services under this Agreement, Contractor will inform the MEDC regarding possible conflicts of interest which may arise as a result of such change. Contractor agrees that conflicts of interest shall be resolved to the MEDC's satisfaction or the MEDC may terminate this Agreement. As used in this Paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.

N) Representations of Contractor

Contractor affirms to the best of its knowledge that it or its owners:

- 1) Do not have any criminal convictions.
- 2) Are not subjects of any pending criminal investigation.
- 3) Are not subjects of any past, present or pending investigations by the Internal Revenue Service or any other federal or state taxing body or court.
- 4) Are not subjects of any past, pending or present litigation regarding its conduct.
- 5) Are not in material default or breach of any contract or agreement that it may have with the State of Michigan, the MEDC or any other public body. Contractor further represents and warrants that it has not been a party to any contract with the State, the MEDC or other public body that was terminated within the previous five (5) years due to the Contractor's failure to perform or otherwise breached an obligation of such contract.

O) State of Michigan Competitors

Any information or knowledge Contractor gains during the course of this Agreement concerning the economic development efforts of the State of Michigan, the MEDC or the business conditions or business community in Michigan shall not be disclosed to any public or private party, sovereign authority or foreign government, during the Term and for a period of two (2) years after the later of the Ending Date, the effective date of termination of this Agreement or so long as any information remains confidential pursuant to any contract, law, treaty, resolution or other enforceable promise.

P) Irreparable Injury

Contractor acknowledges that if it breaches any of its obligations under Paragraphs L and O above, it will cause damages of an irreparable and continuing nature to the MEDC, for which money damages alone will not provide adequate relief. Therefore, in addition to all appropriate monetary damages, the MEDC is entitled to obtain injunctive relief, including, but not limited to, a temporary restraining order to prohibit the Contractor's continuing breach. The MEDC shall have the right to obtain such relief without having to post any bond or other surety.

Q) Indemnification and Contractor Liability Insurance

Contractor shall indemnify, defend, and hold harmless the MEDC, its Executive Committee, its Corporate Board of Directors, and its employees (the "Indemnified Parties") from any and all liability arising out of or in any way related to Contractor's performance under this Agreement, including any liability resulting from any acts of Contractor's employees or agents.

Contractor shall purchase and maintain such insurance to protect the Indemnified Parties from claims that might arise out of or as a result of Contractor's operations. Contractor will provide and maintain its own errors and omissions liability insurance for Contractor's indemnification obligation under this Agreement. The insurance shall be written for not less than One Million Dollars (\$1,000,000) of coverage, but Contractor's indemnification obligation is not limited to this amount.

R) Total Agreement

This Agreement, together with Exhibit A, contains the entire agreement between the Parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding. This Agreement may not be changed except by written agreement signed by the Parties.

S) Assignment/Transfer/Subcontracting

Contractor shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of the MEDC. Contractor agrees that any of Contractor's future successors or subcontractors will be bound by the provisions of this Agreement, unless the MEDC otherwise agrees in a specific written consent. The MEDC reserves the right to approve subcontractors for this Agreement and to require Contractor to replace subcontractors who are found to be unacceptable.

T) Non-Discrimination and Unfair Labor Practices

In connection with this Agreement, Contractor shall comply with 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 all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions, privileges of employment, or any matter directly or indirectly related to employment because of his or her race, religion, color, national origin, age, gender, height, weight, marital status, or physical or mental disability unrelated to the individual's ability to perform the duties of a particular job or position. Contractor further agrees that every subcontract entered into in connection with this Agreement will contain a provision requiring nondiscrimination in employment, as required in this Agreement, binding upon each subcontractor.

Pursuant to 1980 PA 278 (the "Act"), MCL 423.321 *et seq.*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled by the United States National Labor Relations Board.

Contractor, in relation to this Agreement, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears on this register. Pursuant to section 4 of the Act, the MEDC may void this Agreement if, after the Starting Date, the name of the Contractor as an employer or the name of the subcontractor, manufacturer or supplier of Contractor appears on the register.

A breach of this Paragraph constitutes a material breach of this Agreement.

U) Jurisdiction

The laws of the State of Michigan shall govern this Agreement. The Parties shall make a good faith effort to resolve any controversies that arise regarding this Agreement. If a controversy cannot be resolved, the Parties agree that any legal actions concerning this Agreement shall be brought in the Ingham County Circuit Court in Ingham County, Michigan, USA. By signing this Agreement, Contractor acknowledges that it is subject to the jurisdiction of this court and agrees to service by first class or express delivery wherever Contractor resides, in or outside of the United States.

V) Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the services under this Agreement.

W) No Partnership or Agency Relationship

This Agreement does not create a partnership relationship. Further, neither Contractor nor Contractor's employees or other representatives shall hold themselves out to third parties as an agent or representative of MEDC, nor shall they have any authority to take any action or enter into any agreement on behalf of MEDC.

X) No Third Party Beneficiaries

There are no expressed or implied third party beneficiaries to this Agreement.

Y) Counterparts

This Agreement may be executed in one or more counterparts and by facsimile, electronic mail or .pdf, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

Z) Reimbursement

If this Agreement is terminated as a result of the misuse of funds as reasonably determined by the MEDC, MEDC shall have no further obligation to make any payments to Contractor. Furthermore, Contractor shall reimburse MEDC for payments which were expended for purposes other than those described in this Agreement, as well as any funds which were previously disbursed under this Agreement but not yet expended by Contractor.

AA) Survival

The terms and conditions of sections III, V(B), V(E), V(F), V(G), V(H), V(I), V(L), V(O), V(P), V(Q), V(S), V(U), V(W), V(X) and V(Z) shall survive termination of this Agreement.

(remainder of page intentionally left blank)

The signatories below warrant that they are empowered to enter into this Agreement.

CONTRACTOR ACCEPTANCE:

CONTRACTOR

Dated: _____

Authorized Signer
Title

MEDC ACCEPTANCE:

Michigan Economic Development Corporation,
a Public Body Corporate

Dated: _____

Authorized Signer
Title

ATTACHMENT B

INDEPENDENT PRICE DETERMINATION AND PRICES HELD FIRM CERTIFICATION

INDEPENDENT PRICE DETERMINATION

By submission of a proposal, the Bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:

1. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other Bidder or with any competitor; and
2. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to award directly or indirectly to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

Each person signing the proposal certifies that she/he:

- A) Is the person in the Bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to 1, 2, and 3 above; or
- B) Is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to 1, 2, and 3 above.

A proposal will not be considered for award if this Attachment B has been altered so as to delete or modify 1 or 3, above. If 2, above, has been modified or deleted, the proposal will not be considered for award unless the Bidder provides, with this Attachment B, a signed statement which sets forth, in detail, the circumstances of the disclosure and the MEDC determines that such disclosure was not made for the purpose of restricting competition.

PRICES HELD FIRM

LENGTH OF TIME PRICES ARE TO BE HELD FIRM: All rates quoted in bidder's response to this RFP will be firm for the duration of the Contract. No price changes will be permitted.

Signed_____

Date_____