

Resolution 2017-04
Township of Middlebury
Help America Vote Act (HAVA) Grant Agreement
Voting System Hardware, Firmware and Software
RE: Master Contract
071B7700117 - Dominion Voting Systems, Inc.

This Grant Agreement is the mechanism by which Counties, Cities, and Townships apply to the State of Michigan to receive Federal HAVA and State-appropriated funded voting systems, including optical scan tabulators, accessible voting devices and Election Management System (EMS) software, pursuant to the Federal Help America Vote Act (HAVA) of 2002.

Definitions:

“Contractor” means the voting system vendor selected by the county.

“County” means any county within the State of Michigan.

“Department” means the Michigan Department of State.

“Grantee” means the county or local jurisdiction entering into this Grant Agreement.

“Local Jurisdiction” means any city or township within the State of Michigan.

“Voting Systems” means optical scan tabulators, accessible voting devices (for use by voters with disabilities), and EMS software (as applicable) acquired by the counties and local jurisdictions statewide and funded by State-appropriated and Federal HAVA funds.

1. Period of Agreement

The Grant Agreement process applies to voting system purchases occurring between March 1, 2017 and April 30, 2018.

2. Program, Budget and Agreement

This Grant Agreement is to establish a grant program to use State-appropriated and Federal HAVA funds to acquire and implement replacement voting systems throughout the state. Each county, with the involvement of the local jurisdictions within the county, will select one Contractor for the entire county and will develop a countywide implementation plan to replace its voting systems.

Once the county certifies its Contractor selection to the Department, the county will provide the Department with its implementation plan for individual local jurisdictions participating in each planned purchasing phase. The Department will verify the number of voting systems authorized for purchase using State-appropriated and Federal HAVA funds. If changes are required after the *Grant Agreement* is

signed and approved, instructions for amending the *Grant Agreement* will be provided and the Grantee will be required to enter into a new *Grant Agreement*.

This grant program only covers the acquisition and implementation of the voting system selected by each county and the individual voting system components which will be funded utilizing available State-appropriated and Federal HAVA funds. Approved quantities of each voting system component have been determined by the Department and are listed in Section 15 of this *Grant Agreement*.

The Michigan Department of Technology, Management and Budget has entered into a Master Contract with each approved Contractor, which has established maximum statewide prices for each voting system component. The Department has established the available level of grant funding for each component of each Contractor's voting system. State-appropriated and Federal HAVA funding provided via this *Grant Agreement* covers the purchase of the voting system, the software license fee for the EMS software for the full 10-year contract term, and the *initial* service and maintenance period for all components (which covers the acquisition year, plus 4 additional years). The Master Contract includes an *extended* service and maintenance period beyond the *initial* service and maintenance period, for an additional five-year period. Costs for the *extended* service and maintenance period and other additional costs, if any, are the sole responsibility of each individual county / local jurisdiction.

All Contractors will be required to enter into a "purchase agreement" with each local jurisdiction and county in those counties that have selected that Contractor. Typically, this document is the purchase agreement provided by the Contractor. The terms and conditions of the local purchase agreements shall not contradict the Master Contract. The terms of the Master Contract will supercede any conflicting terms in the local purchase agreements.

Each Contractor will enter into a software license agreement with each county and any local jurisdictions that receive EMS. The license agreement shall not contradict any terms contained in the Master Contract. The terms of the Master Contract supercede any conflicting terms in the license agreement.

The Department will initiate voting system orders at the county level, once all *Grant Agreements* for the county are submitted and approved for the designated purchasing phase. Once voting systems have been delivered, tested, and accepted by each Grantee in the county for the designated purchasing phase, the Department will release the State/HAVA funds to the Contractor.

3. General

The individual submitting the *Grant Agreement* must have the proper authority to do so, and must certify in Section 16 of this *Grant Agreement* that this authority has been granted. Examples of authority include, but are not limited to, a resolution from the Board of County Commissioners, City Council or Township Board authorizing the individual submitting the Grant Agreement to execute the Grant Agreement on behalf of the county, city, or township.

4. Performance

Each Grantee will certify and sign the *Grant Agreement* and forward it to the Department per the instructions provided. The Department will review and, once approved, will provide the Grantee with a copy of this fully-executed *Grant Agreement*, which will serve as Notice of the Grant Award. The Department will initiate equipment orders directly with the Contractor, and will provide the Grantee with the *Acceptance Certificate & Payment Authorization Form*, which must be submitted by the Grantee to the Department within 10 business days of voting system delivery. This form indicates acceptance of equipment and payment authorization.

The Grantee is responsible for overseeing its contractual agreement with the Contractor and is responsible for ensuring Contractor performance. Any subsequent malfunction or performance issue with the voting system must be addressed by the Grantee directly with the Contractor. The Grantee is responsible for maintaining any and all Contractor performance records. The Grantee has the sole responsibility to verify Contractor compliance with delivery dates, terms and conditions of delivery, and equipment verification and testing in accordance with the statewide Master Contract for the Grantee's selected Contractor. The Grantee will be solely responsible for additional costs incurred that are not covered by service, maintenance and warranty provisions in the Master Contract.

Grant funding is not provided for the purchase of additional ("backup") voting systems. The Grantee will be responsible for developing and implementing a backup strategy to ensure continued operation on Election Day, in the event of voting system failure in any individual precinct.

5. Testing, Acceptance and Payment

1. Successful acceptance testing of the voting system shall be completed within 10 business days from the date of delivery.
2. Upon completion of all acceptance testing, the Grantee must complete the State-issued Acceptance Certificate & Payment Authorization Form and forward the completed form to the Department.
3. This form will indicate the date of delivery, successful completion of acceptance testing, and will provide authorization to the Department to release funds to the Contractor.
4. Payment to the Contractor shall be made in accordance with the Master Contract with the Grantee's selected Contractor.

6. Ownership of Equipment and Software Purchases: Title

Any voting system purchased pursuant to this *Grant Agreement* is the property of the Grantee.

7. Optional Purchases

If the Grantee desires to purchase additional items beyond those authorized in this *Grant Agreement*, it may do so at its sole expense, outside of this *Grant Agreement*. No State or HAVA funds will be available for such purchases. Prices established via the Master Contract are extended to counties and local jurisdictions by the Contractors for these purposes.

8. Records Maintenance/Retention

The Grantee will maintain a complete set of records and files related to the ordering, delivery, testing, maintenance, and repairs of voting systems. The Grantee shall assure all the terms of this *Grant Agreement* are adhered to and that records and detailed documentation regarding this grant shall be maintained for a period of not less than six (6) years from the date of Contract termination, the date of submission of the final expenditure report or until any litigation and audit findings have been resolved, whichever is later.

9. Management Requirements

Grantee must maintain property records that include a description of the property; a serial number or other identification number; acquisition date; cost of the property; location, use and condition of the property; and any ultimate disposition data including the date of disposal and sale price of the property (if any). Grantee must also maintain records showing 71% Federal participation in the cost of the property.

Grantee must perform a physical inventory of the property and reconcile the results with the property records at least once every two years. Grantee must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated by the Grantee and reported to the Department.

Grantee must develop adequate maintenance procedures to keep the property in good condition. Grantee agrees to maintain extended service and maintenance coverage for the voting system in years 6-10 of the Master Contract, after the expiration of the initial service and maintenance period. If the Grantee fails to maintain extended service and maintenance coverage for the full Contract period, the Department may require Grantee to pay the Department the full amount of voting system grant funds paid to the vendor for the Grantee's county, city or township.

10. Disposition.

When the voting system acquired under this grant is no longer needed, the Department must be notified. Disposition of the equipment will be made as follows:

- Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Department.
- Disposition of EMS software must follow the terms of the Contractor's Software License Agreement.

11. Authorized Access

The Grantee will permit, upon reasonable notification and at reasonable times, access to all records regarding this *Grant Agreement* by the Department and other representatives duly authorized by State or Federal law.

12. Mandatory Conditions

A. Statutory or Regulatory Requirements

The Master Contract for the Grantee's selected Contractor must be incorporated and made a part of the ensuing contract between the Grantee and the Contractor, as a condition for grant approval. The Grantee will comply with applicable Federal and State laws, guidelines, rules and regulations in carrying out the terms of this *Grant Agreement*.

Laws

This is a State of Michigan *Grant Agreement* and is governed by the laws of the State of Michigan. Any dispute arising as a result of this Agreement shall be resolved in the State of Michigan.

Funding

This *Grant Agreement* is subject to and contingent upon the availability and appropriation of Federal funds and any necessary State appropriation.

Costs

The State will not assume any responsibility or liability for costs incurred in relation to this grant. Cancellation The Department may cancel the *Grant Agreement* upon failure to comply with the terms of this grant.

Entire Agreement

The *Grant Agreement* shall represent the entire agreement between the State and Grantee and supercedes any prior oral or written agreements, and all other representations between the parties relating to this subject. The State reserves the right to require counties and local jurisdictions to attend required training sessions with regard to new equipment purchases made under HAVA.

Adherence to Terms

The failure of a party to insist upon strict adherence to any term of this *Grant Agreement* shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term of the *Grant Agreement*.

B. Other

Additional terms and conditions may be negotiated in the contract between the Grant Applicant and the Contractor as long as they do not conflict with the required terms and conditions of this Grant Agreement and Master Contract with the Grantee's selected Contractor.

13. Administration of Agreement

The Grant Manager on behalf of the Department for this *Grant Agreement* and the final *Grant Agreement* will be:

Jeremy Lange, Office of Financial Services
Michigan Department of State

All questions, comments and correspondence regarding this grant process, the *Grant Agreement* and the final *Grant Agreement* must be submitted in writing to the Grant Manager.

14. Completed Agreement

In order to complete *this Grant Agreement*, it must be filled out in its entirety by completing all indicated fields* below, and must be signed by the individual authorized by the county or local jurisdiction to enter into this agreement. The signed grant must be scanned and submitted electronically via the Elections eLearning Center.

15. Voting Systems Authorization

Note: Grant Applicant to fill in all fields indicated (*) below:

This *Grant Agreement* is between the Michigan Department of State and:

THEREFORE, BE IT RESOLVED THAT the Middlebury Township Election Commission hereby adopts this resolution to accept the Grant Agreement proposed above for the new Election equipment.

Motion by: _____, second by: _____ to approve.

Upon roll call vote, the following voted:

Trustee Semans, Trustee Kiger, Treasurer Stevens (absent), Clerk Brown and Supervisor Herendeen

Yes:

Nay:

Motion carried. The Supervisor declared the resolution adopted.

Dated: September 13th, 2017