

VILLAGE OF DOWNERS GROVE
Report for the Village
9/7/2021

SUBJECT:	SUBMITTED BY:
Purchase of Automated Meter Reading Meter Transmission Units	Andy Sikich Public Works Director

SYNOPSIS

A resolution has been prepared to authorize an agreement for the purchase of 252 ACLARA 2-way Meter Transmission Units (MTUs) from Midwest Meter, Inc. for a total price of \$35,028.00.

STRATEGIC PLAN ALIGNMENT

The goals for 2019-2021 identified *Top Quality Infrastructure*.

FISCAL IMPACT

The FY21 budget includes \$40,000 in the Water Fund for the purchase of MTUs.

RECOMMENDATION

Staff recommends approval on the September 7, 2021 consent agenda.

BACKGROUND

The meter transmission units (MTUs) are one component of the wireless fixed network that collects water usage information for the Village's water billing system. The Village uses ACLARA Technologies LLC's STAR Fixed Network Automatic MTU System. Purchasing MTUs in bulk allows the Village to get a lower unit price. The purchase will be from Midwest Meter, Inc. which is the sole supplier for Aclara Technologies LLC's STAR Fixed Network Automatic Meter Reading System in the Chicago area. The purchase will include 252 2-Way MTUs (@\$139.00 each) for a total purchase price of \$35,028.00, which includes shipping.

ATTACHMENTS

Resolution
 Agreement
 Exhibit B – Price Quote from Midwest Meter
 Exhibit C – ACLARA Warranty
 ACLARA/Midwest Meter Sole Source Supplier Memo

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND MIDWEST METER INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Midwest Meter Inc. ("Supplier"), for the purchase of water meter transmitting units (MTUs) submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

AGREEMENT

This Agreement is made this 10th day of August, 2021 by and between Midwest Meter Inc. ("Supplier") and the Village of Downers Grove, Illinois, an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, ("Village").

WHEREAS, the Village wishes to purchase water meter transmitting units (MTUs) from Supplier; and

WHEREAS, the Supplier is willing to provide the water MTUs for compensation and in accordance with the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits that will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

I. Scope of Services

Supplier shall provide MTUs to the Village at the prices indicated in the Quotation dated 8-5-2021 attached hereto and incorporated herein as Exhibit B.

II. Term of Agreement

The term of the contract shall be for two years beginning on the date of execution, but may be extended by mutual agreement of both parties, providing such agreement shall be made in writing and providing such agreement complies with Village purchasing policies and the availability of funds.

III. Compensation

A. Basic Fees:

Fees for these individual products shall be as listed on the attached Exhibit B with a not-to-exceed amount of \$35,028.00.

B. Supplier Invoices:

The Supplier shall prepare monthly invoices that contain a reference number, the billing period, the items purchased and costs therefor.

C. Prompt Payment Act:

The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Supplier within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Supplier within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Supplier requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

IV. General Terms and Conditions

A. Relationship Between the Supplier and the Village

The relationship between the Village and the Supplier is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

B. Equal Employment Opportunity

In the event of the Supplier's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Supplier may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, the Supplier agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which

it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Supplier's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Supplier in its efforts to comply with such Act and Rules and Regulations, the Supplier will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

C. Sexual Harassment

Supplier, as a party to a public contract, has a written sexual harassment policy so that it:

1. Notes the illegality of sexual harassment;
2. Sets forth the State law definition of sexual harassment;
3. Describes sexual harassment utilizing examples;
4. Describes the Supplier or supplier's internal complaint process including penalties;
5. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities, and;
6. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

D. Drug Free Work Place

Supplier, as party to a public contract, certifies and agrees that it will provide a drug free workplace by:

1. Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or Supplier's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

2. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or Supplier's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
3. Providing a copy of the statement required by subparagraph (1) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
4. Notifying the contracting or granting agency within ten (10) days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of such conviction.
5. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5 of the Drug Free Workplace Act.
6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

E. Non-Discrimination

Supplier and its employees agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights rules is specifically incorporated herein.

The Americans with Disabilities Act (42 U.S.C. 12101) and the regulations thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this Agreement, the undersigned vendor certifies that services, programs and activities provided under this Agreement are and will continue to be in compliance with the ADA.

F. Campaign Disclosure Certificate

The Supplier shall comply with the Campaign Disclosure Certificate attached hereto and incorporated herein by reference as Exhibit A.

G. Patriot Act Compliance

The Supplier represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Supplier further represents and warrants to the Village that the Supplier and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Supplier hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

H. Cooperation with FOIA Compliance

Supplier acknowledges that the Freedom of Information Act may apply to public records in possession of the Supplier. Supplier shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et.seq.

I. Copyright or Patent Infringement

The Supplier agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Supplier that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

J. Delivery Charges

Supplier hereby affirms and states that the prices listed on Exhibit B are the unit and total costs for the delivery of item(s) to their designated locations ready for use.

K. Return of Incorrect Items

Any item received by the Village from the Supplier that does not conform to the order will be returned to the Supplier at the Supplier's expense. Supplier shall then provide the Village with the correct item at Supplier's expense.

L. Guidelines Compliance

The Supplier shall certify the proposed equipment meets or exceeds all current Federal and State safety guidelines and requirements for equipment of this nature and shall meet or exceed State safety inspection and licensing standards without modification by the Village.

M. Warranties

Supplier shall furnish the manufacturer's basic and extended warranties, which are set forth in Exhibit C attached hereto and incorporated herein.

V. Insurance and Indemnification of the Village

A. Insurance

The Supplier shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance which, at a minimum, will protect the Supplier from the types of claims set forth below which may arise out of or result from the Supplier's operations under this Contract and for which the Supplier may legally liable:

Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;

Claims for damages resulting from bodily injury, occupational sickness or disease, or death of the Supplier's employees;

Claims for damages resulting from bodily injury, sickness or disease, or death of any person other than the Supplier's employees;

Claims for damages insured by the usual personal injury liability coverage which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Supplier, or (2) by another person;

Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

Claims for damages as a result of professional or any other type of negligent action by the Supplier or failure to properly perform services under the scope of the agreement between the Supplier and the Village.

The Supplier shall demonstrate having insurance coverage for a minimum of \$2

million for professional liability (errors and omissions).

As evidence of said coverages, Supplier shall provide the Village with certificates of insurance naming the Village of Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village.

B. Indemnification

The Supplier will indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Supplier under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence.

VI. Miscellaneous Provisions

A. Termination

In the event of the Supplier's nonperformance, breach of the terms of the Agreement, or for any other reason, including that sufficient funds to complete this Agreement are not appropriated by the Village, the Agreement may be canceled, in whole or in part, upon the Village's written notice to the Supplier. The Village will pay the Supplier's costs actually incurred as of the date of receipt of notice of termination. Upon termination, the Supplier will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the notice of termination.

B. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage.

C. Successors and Assigns

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

D. Waiver of Contract Breach

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

E. Amendment

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

F. Severability of Invalid Provisions

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

G. Assignment

The Supplier will not assign or subcontract any portion of this Agreement, unless the Village agrees to the assignment or subcontract in writing. Any assignment will not relieve the Supplier from its obligations or change the terms of this Agreement.

H. Notice

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

**Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515**

MIDWEST METER, INC.
P.O. BOX 318
EDINBURG, IL 62531

I. Village Ordinances

The Supplier will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

J. Use of Village's Name

The Supplier is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

Midwest Meter, Inc.

Village of Downers Grove

By: *B*

By: _____

Title: President

Title: _____

Date: 8-10-21

Date: _____

**Exhibit A
Campaign Disclosure Certificate**

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing this Agreement, Supplier agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Supplier has not contributed to any elected Village position within the last five (5) years.

Ben Merman
Signature

Ben Merman
Print Name

Supplier has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name