INVITATION TO BID

MBE SET-ASIDE

ITB NUMBER: **ACQ1011**
DATE ISSUED: **December 12, 2012**

The State of Ohio, through the Department of Administrative Services, IT Procurement Services, for the Ohio Department of Commerce, is requesting bids for:

An initial quantity of Dell Equipment for DOLC Application Modernization Data Center Configuration

This ITB is an MBE Set-Aside Contract in accordance with Ohio Revised Code Section 125.081. Only MBE certified vendors with the State of Ohio may participate.

INQUIRY PERIOD BEGINS:	**December 12, 2012**
INQUIRY PERIOD ENDS:	**December 17, 2012**
OPENING DATE:	**December 19, 2012**
OPENING TIME:	**1:00 P.M.**
OPENING LOCATION:	**Department of Administrative Services** **General Services Division** **4200 Surface Road** **Columbus, Ohio 43228**

This ITB consists of five parts and seven attachments, totaling 32 consecutively numbered pages. Please verify that you have a complete copy.

PART ONE: EXECUTIVE SUMMARY

Purpose. This is an Invitation to Bid ("ITB") under Section 125.07 and 125.18 of the Ohio Revised Code (the "Revised Code") and Rule 123:5-1-07 of the Ohio Administrative Code (the "Administrative Code"). The Ohio Department of Commerce (the "Agency") has asked the Department of Administrative Services, IT Procurement Services to solicit bids ("Bids") for an initial quantity of Dell Equipment for DOLC Application Modernization Data Center Configuration (the "Deliverables"), and this ITB is the result of that initiative.

If a participating vendor ("Bidder") submits a suitable Bid in response to this ITB, the State of Ohio (the "State"), through the Department of Administrative Services, may enter into a contract (the "Contract") to have the selected Bidder (the "Contractor") provide all or part of the Deliverables. This ITB provides details on what is required to submit a Bid for the Deliverables, how the State will evaluate the Bids, and what will be required of the Contractor under the Contract.

This ITB also gives the estimated dates for the various events in the bid process and performance of the Contract. While these dates are subject to change, prospective Bidders must be prepared to meet them as they currently stand.

Once awarded, the term of the Contract will be from the award date until the Contractor's performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or June 30, 2013, whichever is sooner. The State may choose to renew the Contract for one additional year through June 30, 2014.

The State may reject any Bid if the Bidder fails to meet a deadline in the bid process or objects to the dates for performance of the Contract or the terms and conditions in this ITB. The State also may reject any Bid if the Bidder's Deliverables fail to meet the requirements of this ITB.

Background. The Ohio Department of Commerce (ODC) is a governmental agency in the Executive Branch of State Government. The ODC administers the Department of Liquor Control (DOLC) which is under taking a modernization project for several of the department's inventory and financial systems.

The contractor working with the agency to supply a commercial-off-the-shelf customized solution for the modernization project has provided DOLC with hardware specifications needed to develop, deploy and support the new systems. The department has chosen to procure components that meet the specifications as well as fitting into the current ODC infrastructure.

Only Dell Authorized Resellers, who provide documentation to show their status in good standing with Dell, and are certified Ohio MBE vendors, will be considered for award of this contract.

Objectives. The State has the following objectives that it wants the Contract to serve, and it will be the Contractor's obligation to ensure that the Deliverables meet these objectives:

The State of Ohio by the Department of Administrative Services, IT Procurement Services (the "State"), is releasing this Invitation to Bid to enter into a single Contract to acquire an initial quantity Dell Equipment for DOLC Application Modernization Data Center Configuration and delivery services as specified herein. The State and members of the State's Cooperative Purchasing Program may purchase additional devices during the term of the Contract. However, the State makes no guarantee that the State will make any purchases pursuant to this ITB or that the actual amount of Deliverables the State purchases under the Contract will meet the estimates.

Overview of the Deliverables. The specifications for the Deliverables are provided in Attachment One of this ITB. This section only gives a brief description of the Deliverables. If there is any inconsistency between this description and Attachment One, the attachment will govern.

Bidders must offer only the specific equipment and quantity listed below:

Quantity	Dell Configuration Reference Number	Description
1	639190237	Dell M1000e Chassis with 6 Virtualization Blades and 2 SQL Blades and related networking
1	639190237	Dell M1000e Chassis with 6 Virtualization Blades and 2 SQL Blades and related networking
1	639184597	Dell M1000e Chassis with 8 Virtualization Blades and related networking
2	637452501	Dell Racks
2	637451587	Ethernet Switch Interconnect
2	637493584	Fibre Channel Switch
1	DLA40773	Dell Compellent SAN Solution - Production Environment
1	DLA42238	Dell Compellent SAN Solution - Dev/Staging Environment
1	DLA42228	Dell Compellent SAN Solution - Remote Data Environment

The initial order must be delivered to the following location within ten (10) calendar days after receipt of a purchase order:

- Department of Commerce
  ATTN: Craig Howell or Ed Ogburn
  6606 Tussing Dr.
  Reynoldsburg, Ohio 43068

Calendar of Events. The schedule for the bid process is given below. The State may change this schedule at anytime. If the State changes the schedule before the Bid due date, it will do so through an announcement on the State Procurement Website's question and answer area for this ITB. The Website announcement will be followed by an amendment to this ITB, also available through the State Procurement Website. After the Bid due date and before the award of the Contract, the State will make schedule changes through the ITB amendment process. It is each prospective Bidder's responsibility to check the Website question and answer area for this ITB for current information regarding this ITB and its Calendar of Events through award of the Contract.

Dates:

Firm Dates	
ITB Issued:	December 12, 2012
Inquiry Period Begins:	December 12, 2012
Inquiry Period Ends:	December 17, 2012, at 8:00 a.m.
Bid Due Date:	December 19, 2012, at 1:00 p.m.
Estimated Dates	
Contract Award:	December 24, 2012
Contract Dates:	
Start Date:	December 31, 2012

There are references in this ITB to the Bid due date. Prospective Bidders must assume, unless it is clearly provided to the contrary in this ITB, that any such reference means the date and time (Columbus, Ohio local time) that the Bids are due and not just the date.

PART TWO: STRUCTURE OF THIS ITB

Organization. This ITB is organized into five parts and has seven attachments. The parts and attachments are listed below.

Parts:

Part One	Executive Summary
Part Two	Structure of this ITB
Part Three	General Instructions
Part Four	Evaluation of Bids
Part Five	Award of the Contract

Attachments:

Attachment One	Requirements and Special Provisions
Attachment Two	Requirements for Bids
Attachment Three	General Terms and Conditions
Attachment Four	Bid Commitment
Attachment Five	Bidder Certifications
Attachment Six	Buy Ohio and Buy American Certification
Attachment Seven	Cost Summary

PART THREE: GENERAL INSTRUCTIONS

The following sections provide details on how to obtain more information about this ITB and how to respond to it. All responses must be complete and in the prescribed format.

Contacts. The following person will represent the State during the ITB process:
Procurement Representative:

Andrew Miller
Department of Administrative Services
IT Procurement Services
4200 Surface Road
Columbus, Ohio 43228

During the performance of the Contract, a State representative (the "Contract Representative") will represent the Ohio Department of Commerce and be the primary contact for the Contract. The State will designate the Contract Representative in writing after the Contract award.

Inquiries. Bidders may make inquiries regarding this ITB anytime during the inquiry period listed in the Calendar of Events. To make an inquiry, Bidders must use the following process:

- Access the State Procurement Website at http://procure.ohio.gov/;
- From the Navigation Bar on the left, select "Find It Fast";
- Select doc/bid/schedule "Schedule #" as the Type;
- Enter ACQ1011 for the ITB number;
- Click the "Find It Fast" button;
- On the document information page, click the "Submit Inquiry" button;
- On the document inquiry page, complete the required "Personal Information" section by providing:
    - Full name of the prospective Bidder's representative for the inquiry,
    - Name of the prospective Bidder,
    - Representative's phone number, and
    - Representative's email address;
- Type the inquiry in the space provided and include:
    - A reference to the relevant part of this ITB,
    - The heading for the provision under question, and
    - The page number of the ITB where the provision can be found; and
- Click the "Submit" button.

A Bidder submitting an inquiry will receive an immediate acknowledgement that the State has received the inquiry as well as an email acknowledging receipt. The Bidder will not receive a personalized response to the question, nor will the Bidder receive notification when the State has answered the question.

Bidders may view inquiries and responses on the State's Procurement Website by using the "Find It Fast" feature described above and by clicking the "View Q & A" button on the document information page.

The State usually responds to all inquiries within three business days of receipt, excluding weekends and State holidays. But the State will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

Amendments to the ITB. If the State amends this ITB before the Bids are due, it will announce all amendments on the State Procurement Website.

Bidders may view amendments by using the "Find It Fast" function of the State's Procurement Webpage and then clicking on the amendment number to display the amendment.

When the State amends this ITB, it also may extend the Bid due date through an announcement on the State Procurement Website. The State may issue amendment announcements anytime before 5:00 p.m. on the day before Bids are due, and it is each prospective Bidder's responsibility to check for announcements and other current information regarding this ITB.

Bid Submittal. Each Bidder must submit four (4) completed, sealed, and signed copies of its Bid in an opaque envelope. The Bidder must clearly mark the exterior of the envelope **"Dell Equipment for DOLC Application Modernization Data Center Configuration – ACQ1011"** on the outside.

In each sealed envelope, the Bidder must include an electronic copy of everything contained within the package on CD-ROM in Microsoft Office and PDF format, as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Bid, the hard copy will control, and the State will base its evaluation of the Bid on the hard copy.

Bids are due no later than 1:00 p.m. on the Bid due date. State will reject bids submitted by email or fax. Bidders must submit their Bids to:

Department of Administrative Services
General Services Division
Office of Procurement Services
4200 Surface Road
Columbus, Ohio 43228
Attn: Bid desk

The State may reject any Bid or unsolicited modifications that it receives after the deadline. A Bidder that mails its Bid must allow for adequate mailing time to ensure its timely receipt. Additionally, Bidders must allow for potential delays due to increased security.

Each Bidder must carefully review the requirements of this ITB and the contents of its Bid. Once opened, Bids cannot be altered or withdrawn, except as allowed by this ITB.

By submitting a Bid, the Bidder acknowledges that it has read this ITB, understands it, and agrees to be bound by its terms. The State is not responsible for the accuracy of any information regarding this ITB gathered through a source other than the inquiry process described in this ITB.

All Bids and other material that Bidders submit will become the property of the State and may be returned only at the State's option. Bidders should not include any proprietary information in a Bid or in other material submitted as part of the evaluation process because the State will have the right to use any materials or ideas submitted without compensation to the Bidder. Additionally, all Bids will be open to the public after the Bid opening.

The State will retain all Bids, or a copy of them, as part of the Contract file for at least three years. After the three-year retention period, the State may return, destroy, or otherwise dispose of the Bids and any copies of them.

Prospective Bidders may not prepare or modify their Bids on State property.

Waiver of Defects. The State may waive any defects in any Bid or in the submission process followed by a Bidder. But the State will only do so if it believes that it is in the State's interests and will not cause any material unfairness to other Bidders.

Changes to Bids. The State will allow modifications to and withdrawals of Bids only if the State receives them before the Bid due date. No modifications or withdrawals will be permitted after the due date, except as authorized by this ITB.

Bid Instructions. Each Bid must be organized in an indexed binder ordered in the same manner as the response items are ordered in Attachment Two, which describes the requirements for a Bid's contents and formatting. The State wants clear and concise Bids, but Bidders must answer questions completely and meet all the ITB's requirements.

Bid Costs. The State is not liable for any costs a Bidder incurs in responding to this ITB or from participating in the bidding process. This is true regardless of whether the State awards the Contract through this process, decides not to go forward with the procurement, cancels this ITB for any reason, or contracts for the Deliverables through another ITB or a different process.

PART FOUR: BID EVALUATION

Bid Opening. The State will open the Bids on December 19, 2012, at 1:00 p.m., and Bidders may attend the opening. The State will open the Bids in the presence of a representative of the Auditor of State. After the opening, the Procurement Representative will begin the initial review of the Bids.

After Bids are opened, they are public records, as defined in Revised Code Section 149.43, and they are subject to all laws applicable to public records.

Rejection of Bids. The State may reject any Bid that is late, not in the required format, does not address all the requirements of this ITB, or that the State believes is excessive in price. The State also may reject any Bid in which the Bidder takes exception to the terms and conditions of this ITB, includes assumptions or conditions, or fails to comply with the procedures for participating in the ITB process. In addition, if the State believes it is in its interests to do so, it may cancel this ITB, reject all the Bids, and seek to make the procurement through a new ITB or other means.

Evaluation of Bids. The Bid evaluation process may consist of up to five phases:

1. Initial review
2. Determination of costs
3. Application of Buy Ohio and American preferences
4. Determination of responsiveness
5. Determination of responsibility
6. Award

Clarifications and Corrections. During the evaluation process, the State may request clarifications from any Bidder with a Bid under active consideration and may give any Bidder the opportunity to correct defects in its Bid. But the State will do so only if it believes that it is in the State's interests to do so and it will not result in an unfair advantage for the Bidder. The State may reject any clarification that is non-responsive or broader in scope than what the State requested. If the State does reject such a clarification, it then may request a corrected clarification, consider the Bid without the clarification, or disqualify the Bid.

Bidders may not prepare corrections or clarifications to their Bids on State property.

Initial Review. The Procurement Representative will review all Bids for their format and completeness. The Procurement Representative normally rejects incomplete or incorrectly formatted Bids, though he or she may waive any minor defects or allow a Bidder to submit a correction for such defects. Further, if the Auditor of State does not certify a Bid due to lateness, the Procurement Representative will not open it or evaluate it for format or completeness.

Determination of Lowest Bid. For the State to determine that a Bid is the lowest Bid, the State must determine that the Bid comes from a responsible Bidder, the Bid is responsive to the requirements of this ITB, and the Bid offers the lowest-cost Deliverables in comparison to all other responsive Bids from

responsible Bidders. The State will make this determination without regard to any discounts or incentives and only after application of any preferences, as further described below.

Preferences. The Contract award is subject to the domestic preference provisions of the Buy America Act, 41 USC Sections 10a-d (1976), as amended. It also is subject to the preference for Ohio products under Revised Code Sections 125.09 and 125.11 and Administrative Code Rule 123:5-1-06.

Buy American. The State will evaluate the Bids to determine if a Bidder's offering is for a "domestic source end product," as defined in 41 USC Sections 10a-d. Any bid item not meeting this requirement will be rejected, except when the item qualifies for an exemption under 48 CFR 25.104 as an item not produced in sufficient quantities in the United States.

To have items offered in response to this ITB qualify as domestic source end products, the Bidder must complete the Buy American Certification provided in Attachment Six. If the Bidder fails to complete the Buy American Certification, the State will presume that the Bidder's offering does not qualify as domestic source end products.

Buy Ohio. Following the State's Buy American determination, it will evaluate all remaining bids to determine if any qualify for the preference given to Ohio and border-state Bidders. Bidders from states bordering Ohio qualify for this preference only if the border state imposes no greater restrictions than those contained in Revised Code Sections 125.09 and 125.11. The State has determined that Indiana, Kentucky, Michigan, New York, and Pennsylvania currently qualify as border states for this purpose.

Ohio products are defined as products that have been mined, excavated, produced, manufactured, raised, or grown in Ohio or qualifying border states and that have at least 25% of their manufactured cost represented by Ohio or qualifying border-state products, labor, skill, and other services.

Bidders having a significant economic presence in Ohio or a qualifying border state also may qualify for an award of the Contract on the same basis as Bidders offering items produced in Ohio or qualifying border states. The State determines whether a Bidder has a significant economic presence in Ohio or a qualifying border state based on the number of employees and capital investment the Bidder has in Ohio or a qualifying border state.

When the State determines that the selection of the lowest Ohio or qualifying border-state Bid will not result in an excessive price or disproportionately inferior Deliverables, the State may award the Contract to the lowest responsible and responsive Ohio or qualifying border-state Bidder. Otherwise, when the State determines that selection of the lowest Ohio or qualifying border-state Bid will result in an excessive price or disproportionately inferior Deliverables, the State may award the Contract to the lowest Bid, regardless of the Bidder's location within the United States.

To qualify for the Ohio or border-state preference, the Bidder must complete the Buy Ohio Certification provided in Attachment Six. If the Bidder fails to complete the Buy Ohio Certification, the State will presume the Bidder's offering does not qualify for the preference.

Discounts and Incentives. While Bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest Bidder.

Cooperative Purchasing Program. Members of the State's Cooperative Purchasing Program may utilize this ITB contract. This voluntary program offers Ohio counties, townships, municipalities, school districts, universities, transit authorities, park districts and others the benefits and cost savings of buying goods and services through State contracts.

Determination of Responsiveness. After the determination of the lowest Bid, the State will evaluate the lowest Bid to determine whether it is responsive. A Bid is responsive if it responds to the ITB's specifications in all material respects and contains no irregularities or deviations from the specifications

that would affect the amount of the Bid, give the Bidder an unfair competitive advantage, or affect the value the State will receive from the Deliverables.

The State always will review the responsiveness of the selected Bid before making the award. If the State determines that the selected Bid is not responsive, the State may reject it and review the next lowest Bid for its responsiveness. The State may continue this process until it identifies a responsive Bid or determines that no acceptable Bid is responsive.

Determination of Responsibility. After the determination of the lowest Bid, the State will review the background of the lowest Bidder and its subcontractors, if applicable, to ensure the responsibility of the Bidder. The State will not award the Contract to a Bidder that it determines is not responsible or that has proposed subcontractors that are not responsible. The State's determination of a Bidder's responsibility may include the following factors: experience, financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the Contract properly. The State may make this determination of responsibility based on information in the Bidder's Bid, from reference evaluations, from a review of the Bidder's financial ability, and any other sources that the State requests from the Bidder or that it determines is relevant.

The State always will review the responsibility of the selected Bidder before making the award. If the State determines that the selected Bidder is not responsible, the State may reject its Bid and review the next lowest Bidder for its responsibility. The State may continue this process until it identifies a responsible Bidder or determines that no Bidder with an acceptable Bid is responsible.

Reference Checks. As part of the State's determination of a Bidder's responsibility, the State will conduct reference checks to verify and validate the Bidder's past performance. Reference checks that indicate poor or failed performance by the Bidder may be cause for rejection of the Bid. Additionally, the State may reject a Bid as non-responsive if the Bidder fails to provide adequate reference information to complete its evaluation process.

References must be provided to demonstrate the Bidder's ability to provide the equipment and services required by the State. References will be verified. References provided by the Bidder must agree to be interviewed by representatives of the State.

Financial Ability. Part of the State's determination of a Bidder's responsibility may include the Bidder's financial ability to perform the Contract. This ITB may expressly require the submission of audited financial statements from all Bidders in their Bids. But if this ITB does not make this an express requirement, the State still may insist that a Bidder submit audited financial statements from the past three years, if the State is concerned that a Bidder may not have the financial ability to carry out the Contract. Also, the State may consider financial information other than the information that this ITB requires as part of a Bid, such as credit reports from third-party reporting agencies.

Debarment. The State will not award the Contract to any Bidder that is listed on the State's debarment list at the time of the award. Further, the State will not award the Contract to any Bidder on the US government's debarment list at the time of the award if the State is relying on federal funds to make payments under the Contract or otherwise believes it is not in the State's interest to do so.

Section 9.24 Findings. Revised Code Section 9.24 prohibits the State from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery (a "Finding"), if the Finding is unresolved at the time of the award. This also applies to renewals of contracts. By submitting a Bid, the Bidder warrants that it is not subject to an unresolved Finding under Revised Code Section 9.24 at the time of its submission. Additionally, the Bidder warrants that it will notify the Procurement Representative in writing immediately upon becoming subject to such an unresolved Finding after submitting its Bid and before the award of a Contract under this ITB. And should the State select the Bidder for an award of a Contract, this warranty of immediate written notice will apply during the term of the Contract, including any renewals or extensions.

Tie Bids. If two or more Bidders offer the same cost and both are determined to be responsive and responsible, the State may break the tie with the flip of a coin. The State may assign “heads” and “tails” to the Bidders. The coin flip may be conducted in the presence of the Bidders, if they elect to be present. The flip will be the final determination of the lowest, responsive, and responsible Bidder.

Unit Costs. Bidders must provide a unit cost for each line item in the cost summary and not just a total cost. If this ITB expressly provides that some line items are optional, and the Bidder does not plan to offer the State an optional line item as part of its Bid, the Bidder must enter “No bid” on that line item. Unless this ITB expressly provides otherwise, all line items are mandatory. Bidders may not provide a cost using fractional cents, and the State may reject any Bid that does not provide its costs in whole cents.

Estimated Quantities. Unless otherwise expressly provided in this ITB, quantities of Deliverables given in this ITB are estimates only. The State makes no guarantee that the State will make any purchases pursuant to this ITB or that the actual amount of Deliverables the State purchases under the Contract will meet the estimates. Any estimated quantities are provided in Attachment One, and the selected Bidder must be prepared to meet those quantities. The State may procure additional equipment subsequent to the initial purchase. Additional purchases will be procured at the single unit cost as listed in the Cost Summary.

Corrections after Bid Opening. After the Bid opening, the State may permit a Bidder alleging an inadvertent error to correct its Bid, but only if the mistake and the correction are clearly evident from the Bid and the correction does not affect the amount of the Bid or otherwise give the Bidder an unfair competitive advantage.

Bids are Firm. Once opened, all Bids are firm and irrevocable for 90 days. Beyond 90 days, the Bidder will have the option of honoring its Bid or making a written request to withdraw it from consideration.

Samples. The State may require Bidders to provide sample supplies, equipment, or examples of work, and each Bidder must comply with the request at its sole expense. Samples must clearly identify the Bidder, the ITB number, and the item the sample represents in the Bidder’s Bid. Upon the Bidder’s timely request, the State will return samples that are not destroyed by testing to the Bidder at the Bidder’s expense. The State may keep the samples of the Bidder that is awarded the Contract until the completion of the Contract. Unsolicited samples submitted in response to this ITB will not be evaluated, and the State may dispose of them in any way it chooses. Attachment One will indicate whether any samples are required and, if so, provide more details on the process for submitting them. If a Bidder fails to fully comply with the submission process, the State may reject the affected Bid.

Communications. During the evaluation process, any attempt by a Bidder to influence the evaluation process may be grounds for immediate disqualification of the Bidder.

Certifications. When submitting a bid, the Bidder must sign and submit the Bidder Certification Form that is included as Attachment Five to this ITB. Failure to submit all the required certifications may result in the State disqualifying the Bidder. Certifications that require commitments during performance of the Contract will bind the Contractor to honor those commitments, and any failure to do so will be grounds for termination of the Contract for default. Additionally, the State may terminate the Contract immediately on notice should any of the certifications have been untrue when the successful Bidder submitted its Bid or at the time of the Contract award.

Subcontracting. It may be necessary for the Bidder to use a subcontractor to perform a portion of the work to be done under the Contract, but the Bidder must be the primary contractor for the overall effort. The Bidder must identify its subcontractors, suppliers, and joint ventures for performance of the Contract. The Bidder must supplement its list of subcontractors, suppliers, or joint ventures if the Bidder’s subcontractors, suppliers, or joint ventures change during the term of this Contract. The Bidder may not use any subcontractor that has been the subject of any government action to limit the subcontractor’s right to do business with that government in the last seven years. The Bidder must provide a written explanation with its Bid if the Bidder’s subcontractor cannot so certify. Further, the Bidder must obtain the

subcontractor agreement in writing to be bound to all the terms, conditions, and specifications of the Contract. The State may deny use of any subcontractor if the State determines that the Bidder will not be the primary Contractor who will perform the work under the Contract.

PART FIVE: AWARD OF THE CONTRACT

Contract Award. The State plans to award the Contract based on the schedule in the ITB, if the State decides the procurement is in its best interests and has not changed the award date. Unless otherwise stated in this ITB, the State may award the Contract by item or as a whole. If the State awards the Contract by item, it may award multiple Contracts. In awarding multiple Contracts by line item, the State will make the awards by lowest Bidder for each item awarded.

Included with this ITB, as Attachment Four, is a Bid Commitment. In awarding the Contract, the State will issue a letter of award ("Award Letter") to the selected Contractor. The Bid Commitment and the Award Letter together will bind the Contractor and represent the formation of a Contract. But the State will be committed only when the State issues a purchase order and all other prerequisites identified in this ITB have occurred.

If the State makes an award pursuant to this ITB, and the Contractor is unable or unwilling to perform under the Contract, the State may cancel the Contract, effective immediately on notice to the Contractor. The State then may return to the evaluation process under this ITB and resume the process without giving further consideration to the originally selected Bidder. Additionally, the State may seek such other remedies as may be available to the State in law or in equity for the selected Bidder's failure to perform under the Contract.

Contract. If this ITB results in an award, the Contract will consist of the Award Letter, this ITB, including all attachments, written amendments to this ITB, the Contractor's accepted Bid, and written, authorized amendments to the Contractor's Bid. It also will include any materials incorporated by reference in the above documents and any purchase orders issued under the Contract. The general terms and conditions for the Contract are contained in Attachment Three to this ITB. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. The Award Letter
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Bid, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Bid, to the extent they are not inconsistent with any of the foregoing.

Notwithstanding the order listed above, amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract. To be binding on the State, a duly authorized representative of the Department of Administrative Services, Office of Procurement Services must sign any change order under, or amendment to, the Contract.

ATTACHMENT ONE: REQUIREMENTS AND SPECIAL PROVISIONS

This attachment describes the Deliverables and what the Contractor must do to perform under the Contract. It also provides specifications for the Deliverables under the Contract and gives performance and delivery dates, as applicable.

Requirements. The Contractor must meet all the ITB's requirements and provide all the Deliverables.

The State requires Bidders to arrange procurement and delivery for an initial order of Dell equipment for Data Center configuration and DOLC application modernization workstations. Equipment must be delivered to the following location:

- Department of Commerce
  ATTN: Craig Howell or Ed Ogburn
  6606 Tussing Dr.
  Reynoldsburg, Ohio 43068

Performance Dates. The hardware must be delivered within ten (10) calendar days of receiving a purchase order.

Acceptance Testing. A performance test will not be done.

Product Evaluation. A product evaluation will not be done.

Estimated Quantities. Bidder's must offer only the specified equipment based on the Dell Configuration Reference Number included next to each line item. The total initial order quantity estimate is supplied on the Cost Summary form.

Delivery/Freight Charges. Unless otherwise provided, the State will not be responsible for freight or delivery charges. Prices are to be based upon the product(s) being offered F.O.B. destination, free inside delivery to the location designated by the Agency at mutually agreeable times with inside delivery to areas of the Agency(s) choosing, freight prepaid by the Contractor to the location in the ITB or as listed on the purchase order issued under any Contract awarded. Any shipment marked C.O.D. will be rejected and returned at the Contractor's expense. Costs must include all packing, transportation and insurance charges. Title and risk of loss passes to the State upon delivery and acceptance of all Deliverables, except for software that is subject to a license agreement, but risk of loss passes to the State only upon delivery and inspection for damage, which must occur within fifteen days of delivery. No payment will be made for any deliverable until the State has accepted the Deliverable. The State will have fifteen days after delivery to accept or reject a Deliverable.

Reimbursable Expenses. None.

Bill to Address. Ohio Department of Commerce
ATTN: Fiscal Services
6606 Tussing Dr.
Reynoldsburg, Ohio 43068

Location of Data. None.

ATTACHMENT TWO: REQUIREMENTS FOR BIDS

Bid Format. Each Bid must include sufficient data to allow the State to verify the total cost for the Deliverables and all of the Bidder's claims of meeting the ITB's requirements. Further, each Bid must respond to every request for information in this attachment.

These instructions describe the required format for a responsive Bid. An identifiable tab sheet must precede each section of a Bid, and each Bid must follow the format outlined below. All pages, except pre-printed technical inserts, must be sequentially numbered. Any material deviation from the format outlined below may result in a rejection of the Bid.

Each Bid must contain the following:

Cover letter
Vendor Information Form (OBM-5657)
Bidder Certification Form
- Dell Authorized Reseller Documentation

Proof of Insurance
W-9 Form
Affirmative Action
Bid Commitment
References
MBE Certification
Buy Ohio and Buy American Certification
Cost Summary

The State requires an originally signed Cover Letter, Vendor Information Form, Bidder Certification Form, W-9, DMA, and Bid Commitment. All originally signed documents must be included in the same Bid binder, and the Bidder must indicate on the outside of the binder which Bid contains the originally signed documents. Additional copies of the Bid may contain copies of these documents.

Cover letter. The Bidder must submit a signed cover letter with a brief company overview.

Vendor Information Form. The offeror must submit a signed and completed Vendor Information Form (OBM-5657) for itself and for each subcontractor the offeror plans to use under the Contract.
The form is available at http://obm.ohio.gov/forms/OAKS.asp.

Bidder Certification Form. Each Bidder must complete, sign, and submit the Bidder Certification Form included as Attachment Five.

Dell Authorized Reseller Documentation. Bidder must include documentation from Dell showing they are an authorized reseller in good standing.

Proof of Insurance. The Bidder must provide the certificate of insurance in the form that Attachment Three requires. The policy may be written on an occurrence or claims made basis.

W-9 Form. The Bidder must submit at least one originally signed W-9. A current W-9 form is available at www.irs.gov.

Affirmative Action. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using:
http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification.aspx

Bid Commitment. The Bidder must sign and submit the Bid Commitment form (Attachment Four).

References. The Bidder must provide references demonstrating the Bidder's ability to provide the equipment and services required by the State (Part Four: Bid Evaluation – Reference Checks).

MBE Certification. The Bidder must submit a copy of its current MBE Certification issued by the Ohio Department of Administrative Services.

Buy Ohio and Buy American Certification. The Bidder must complete and submit the Buy Ohio and Buy American Certification (Attachment Six).

Cost Summary. This ITB includes a Cost Summary Form (Attachment Seven). Bidders may not reformat this form. Each Bidder must complete the Cost Summary Form in the exact format provided, since the State may reject any Bid with a reformatted Cost Summary Form.

The Cost Summary Form must not include exceptions, additional terms and conditions, or assumptions.

The Bidder's total cost for the Deliverables must be represented as the total price.

The State will not be liable for or pay any costs that the Bidder does not identify in its Bid.

ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

Statement of Work. The ITB and the Contractor's Bid (collectively, the "ITB Documents") are a part of this Contract and describe the goods, services, and any other items (the "Deliverables") the Contractor must deliver under this Contract. The Contractor must provide the Deliverables in a proper, timely, and efficient manner. The Contractor also must furnish its own support staff necessary for the satisfactory performance of this Contract.

Term. Once awarded, the term of the Contract will be from the award date through June 30, 2013. The State may choose to renew the Contract for one additional year through June 30, 2014.

The State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails to continue funding for the payments or other obligations due as part of this Contract, the State's obligations under this Contract will terminate as of the date that the funding expires without further obligation of the State.

The ITB Documents may have one or more dates for the delivery of Deliverables, and the Contractor must make all deliveries within the times the ITB Documents require. If the Contractor does not meet those dates, the Contractor will be in default, and the State may terminate this Contract for cause under the termination section contained below.

Payment. In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the ITB Documents (the "Fee") for any Deliverables actually ordered by issuance of a valid State purchase order, plus any other expenses identified as reimbursable in the ITB Documents. But in no event will payments under this Contract exceed the "not-to-exceed" amount in the ITB Documents without the prior, written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance under this Contract. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents this Contract requires. An invoice must comply with the State's then current policies regarding invoices and their submission. The State will notify the Contractor in writing within 15 business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect. If the invoice properly reflects payment due to the Contractor and complies with all the State's requirements for a proper invoice, the State will pay the Contractor within 30 days after the State receives the invoice.

The Contractor must send all invoices under this Contract to the "bill to" address in the ITB Documents or in the applicable purchase order.

The State will pay the Contractor interest on any late payment, as provided in Ohio Revised Code (the "Revised Code") Section 126.30. If the State disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the State will notify the Contractor, in writing, stating the grounds for the dispute. The State then may deduct the disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of the State, the State also may withhold payment otherwise due to the Contractor. Both parties will attempt to resolve any claims of material breach or payment disputes through discussions between the Contractor's appropriate executive and the Department of Administrative Services, Office of Procurement Services. The State will consult with the Contractor as early as reasonably possible about the nature of the claim or dispute and the amount of payment affected. When the Contractor has resolved the matter to the State's satisfaction, the State will pay the disputed amount within 30 business days after the matter is resolved. The State has no obligation to make any disputed payments until the matter is resolved, and the Contractor must continue its performance under this Contract pending resolution of the dispute or claim.

If the State has already paid the Contractor on an invoice but later disputes the amount covered by the invoice, and if the Contractor fails to correct the problem within 30 calendar days after written notice, the

Contractor must reimburse the State for that amount at the end of the 30 calendar days as a nonexclusive remedy for the State. On written request from the Contractor, the State will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to the State's facilities and any information the State has regarding the problem.

Reimbursable Expenses. The State will pay all reimbursable expenses identified in the ITB Documents, if any, according to the terms in the ITB Documents and, where applicable, Revised Code Section 126.31. The Contractor is solely responsible for all expenses that it incurs in the performance of this Contract that are not identified as reimbursable in the ITB Documents.

In making any reimbursable expenditure, the Contractor always must comply with the more restrictive of its own, then current internal policies for making such expenditures or the State's then current policies. All reimbursable travel will require the advance written approval of the State's authorized representative. The Contractor must bill all reimbursable expenses monthly, and the State will reimburse the Contractor for them within 30 business days of receiving the Contractor's invoice.

Ohio Payment Card. The State may use the Ohio Payment Card to purchase Deliverables from this Contract. Such purchases may not exceed $2,500 unless the Office of Budget & Management ("OBM") has approved the purchasing agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of the increase on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the Deliverables ordered. For partial deliveries or performance, the Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon delivery of the remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor will receive payment through its merchant bank within the time agreed on between the Contractor and that merchant bank. The Contractor should expect normal processing fees from its merchant bank for a payment card transaction. The Contractor may not pass on those fees to the State.

Right of Offset. The State may set off the amount of any Ohio tax liability or other obligation of the Contractor or its subsidiaries to the State, including any amounts the Contractor owes to the State under this or other contracts, against any payments due from the State to the Contractor under this or any other contracts with the State.

Certification of Funds. None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

(a) All statutory provisions under the Revised Code, including Section 126.07, have been met;
(b) All necessary funds are made available by the appropriate State entities;
(c) If required, the Controlling Board of Ohio approves this Contract; and
(d) If the State is relying on federal or third-party funds for this Contract, the State gives the Contractor written notice that such funds are available.

Sales, Use, Excise, and Property Taxes. The State is exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Deliverables, such will be the sole and exclusive responsibility of the Contractor. And the Contractor will pay such taxes, together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or a later time.

PART TWO: CONTRACT ADMINISTRATION

Other Contractors. The State may hold other contracts for additional or related goods and services. The Contractor must fully cooperate with and coordinate its performance with all other contractors and State employees as may be required for the smooth and efficient fulfillment of this Contract. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or the State's employees.

Subcontracting. The Contractor may not enter into subcontracts related to the performance of this Contract after award without written approval from the State. But the Contractor will not need the State's written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Contract.

The Contractor will be solely responsible for payment of its subcontractor and any claims of subcontractors for any failure of the Contractor or any of its other subcontractors to meet the requirements of this Contract in a timely and professional manner. The Contractor will hold the State harmless for and will indemnify the State against any such claims.

The Contractor assumes responsibility for all Deliverables whether it, a subcontractor, or third-party manufacturer produces them in whole or in part. Further, the Contractor will be the sole point of contact with regard to all contractual matters, including payment of all charges resulting from the Contract. And the Contractor will be fully responsible for any default by a subcontractor, just as if the Contractor itself had defaulted.

If the Contractor uses any subcontractors, each subcontractor must have a written agreement with the Contractor. That written agreement must incorporate this Contract by reference. The agreement also must pass through to the subcontractor all provisions of this Contract that would be fully effective only if they bind both the subcontractor and the Contractor. Among such provisions are the limitations on the Contractor's remedies, the insurance requirements, record keeping obligations, and audit rights. Some sections of this Contract may limit the need to pass through their requirements to subcontracts to avoid placing cumbersome obligations on minor subcontractors. But this exception is applicable only to sections that expressly provide an exclusion for small-dollar subcontracts. Should the Contractor fail to pass through any provisions of this Contract to one of its subcontractors and the failure damages the State in any way, the Contractor must indemnify the State for the damages.

Record Keeping. The Contractor must keep all financial records in accordance with generally accepted accounting principles consistently applied. The Contractor also must file documentation to support each action under this Contract in a manner allowing the documentation to be readily located. And the Contractor must keep all records and documents related to this Contract at its principal place of business or at its office where the work was performed.

Audits. During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Contract. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Contract.

If an audit reveals any material deviation from the Contract's requirements, any misrepresentation, or any overcharge to the State, the State will be entitled to recover its damages, including the cost of the audit.

Insurance. The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

(a) Workers' compensation insurance, as required by Ohio law, and if some of the work will be done outside Ohio, the laws of the appropriate states where such work will be done. The Contractor also must maintain employer's liability insurance with at least a $1,000,000.00 limit.

(b) Commercial general liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a waiver of subrogation. At a minimum, the limits of the insurance must be:

$ 2,000,000 General Aggregate
$ 2,000,000 Products/Completed Operations Aggregate
$ 1,000,000 per Occurrence Limit
$ 1,000,000 Personal and Advertising Injury Limit
$ 100,000 Fire Legal Liability
$ 10,000 Medical Payments

The policy must be endorsed to provide the State with 30-days prior written notice of cancellation or material change to the policy. And the Contractor's commercial general liability insurance must be primary over any other insurance coverage.

(c) Commercial automobile liability insurance with a combined single limit of $500,000.

All certificates must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A-" rating by A.M. Best.

Representatives. The State's representative under this Contract will be the person identified in the ITB Documents or in a subsequent notice to the Contractor as the "Contract Representative." The Contract Representative will review all reports the Contractor makes in the performance of the Contract, will conduct all liaison with the Contractor, and will accept or reject the Deliverables. The Contract Representative may delegate his responsibilities for individual aspects of the Contract to one or more managers, who may act as the Contract Representative for those individual portions of the Contract.

The Contractor's Contract Manager under this Contract will be the person identified on the ITB Documents as the "Contract Manager." The Contract Manager will be the Contractor's liaison with the State under this Contract. Additionally, the Contract Manager will prepare and submit to the Contract Representative all reports, plans, and other materials that the ITB Documents require from the Contractor.

Either party, upon written notice to the other party, may designate another representative.

Work Responsibilities. If the Contractor must work on the State's property, the State will provide the Contractor with reasonable access to the work site. After the work is complete, the Contractor must issue a completion letter and secure the signature of the Contract Representative certifying that work is complete. The letter must describe the nature, date, and location of the work, as well as the date the Contract Representative certified the work as complete and operational.

Unless otherwise provided in the ITB Documents, the Contractor is solely responsible for obtaining and maintaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or federal agency for its performance under the Contract.

Product Recall. If any Deliverable is recalled, seized, embargoed, or determined to be misbranded by the manufacturer or state or federal regulatory agency, the Contractor must notify the Department of Administrative Services, Office of Procurement Services and all agencies and Political Subdivisions that have issued orders under this Contract within ten business days after notice has been given. The Contractor, at the option of the ordering agency, either must reimburse the purchase price or provide an equivalent replacement product at no additional cost. The Contractor also must remove and replace the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, the Contractor may be required to reimburse storage and handling fees, to be calculated from time of delivery and acceptance to actual removal. The Contractor will bear all costs associated with

the removal and proper disposal of the affected product. Any failure of the Contractor to reimburse the purchase price or provide equivalent replacement product will be a default.

Contract Compliance. Participating State agencies will be responsible for the administration of the Contract with respect to their individual orders and will monitor the Contractor's performance and compliance with the terms, conditions, and specifications of the Contract. If an agency becomes aware of a breach of the Contractor's obligations under this Contract, such may be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the breach, the agency may notify the Department of Administrative Services, Office of Procurement Services through a Complaint to Vendor (CTV) to help resolve the situation, and the Department of Administrative services, Office of Procurement Services will take the appropriate action under this Contract with respect to the breach, including among other things termination of this Contract, litigation, or initiation of debarment proceedings.

Excusable Delay. Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

Independent Status of the Contractor. The parties are independent of one another, and the Contractor's directors, officers, employees, and agents ("Contractor's Personnel") may act only in the capacity of representatives of the Contractor and not as representatives of the State. Further, the Contractor's Personnel will not be deemed for any purpose to be officials, employees, representatives, or agents of the State. The Contractor assumes full responsibility for the actions of the Contractor's Personnel while they are performing under this Contract and will be solely responsible for paying the Contractor's Personnel (including withholding and paying income taxes and social security, workers' compensation, disability benefits, retirement benefits, and the like). The Contractor may not commit, and is not authorized to commit, the State in any manner.

PART THREE: PUBLICITY AND CONFIDENTIAL INFORMATION

Publicity. The Contractor may not publicize or advertise that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing.

Confidentiality. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation that the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret, if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors, potential contractors with the State, or individuals or organizations about whom the State keeps information. By way of example, information must be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, the Contractor also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of the State, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-

patient, or similar privilege may apply, and any documents or records excluded by Ohio law from public records disclosure requirements.

The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract. Additionally, the Contractor must restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to perform under this Contract. The Contractor will be liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, and the Contractor must indemnify the State against any claims made against the State due to the Contractor's improper disclosure of Confidential Information.

The Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor Personnel and subcontractors that have access to any Confidential Information must execute a confidentiality agreement incorporating the obligations in this section.

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession before disclosure by the State, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) except as provided in the next paragraph, is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but the Contractor first must obligate them to the requirements of this section.

The Contractor must notify the State in writing as soon as the Contractor learns that the Contractor or any of the Contractor's People or it subcontractors or agents has disclosed any of the State's Confidential Information in a manner that is inconsistent with the requirements of this section.

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

Warranties. Except as otherwise provided, the duration of the warranties under this Contract is three years (the "Warranty Period").

The Contractor warrants that its performance under this Contract will be in accordance with the requirements of this Contract and without any material defects. The Contractor also warrants that all Deliverables will conform to their written specifications in all material respects and be merchantable and fit for the particular purposes described in the ITB Documents.

Further, for any commercial software ("Software") that is a Deliverable under this Contract, the Contractor warrants that the Software will be free of material defects and will function in substantial conformance to its user and technical documentation when used in the operating environment for which it is intended and

in accordance with its documentation. Additionally, the Contractor warrants that all media on which the Software is delivered to the State will be free from defects and viruses.

In addition, for any Deliverable that is a mechanical device, electrical equipment, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment"), the Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment on the date of acceptance.

The Contractor also warrants that the Equipment will perform substantially in accordance with any applicable specifications in the ITB Documents as well as the Equipment's user and technical documentation. The foregoing warranties will not apply to Equipment that is modified or damaged after title passes to the State.

GENERAL EXCLUSION OF WARRANTIES. THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT.

Remedies. If any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct the failure within 30 days or less or must refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim is based on the modification or misuse. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must do one of the following things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

The Contractor's entire liability and the State's sole remedy for any breach of the above media warranty is limited to requiring the Contractor to replace the defective media expeditiously and without charge to the State. The Contractor's entire liability and the State's sole remedy for any breach of the above anti-virus warranty will be limited to requiring the Contractor to deliver a replacement copy of the relevant Software to the State free of viruses. Furthermore, the Contractor's entire liability and the State's sole remedy for any breach of the above warranties of fitness, merchantability, and against defects in the Software will be limited to the Contractor expeditiously correcting the defect or issue and providing the State with a patch containing the correction. If within the times given below, the Contractor does not provide a replacement copy for defective media or Software containing a virus or fails to deliver a fix for a defect in the Software or a correction solving a fitness or merchantability issue, the Contractor must refund all License Fees paid by the State for the affected Software. In the case of defective media or Software containing a virus, the Contractor will have 15 days after written notice to provide a replacement. In the case of other defects, merchantability issues, or fitness issues, the Contractor will have 30 days after written notice to deliver a correction that resolves the problem. Upon the Contractor's issuance of a refund, the State will return or destroy all copies of the Software and, upon the Contractor's request, certify in writing that it has done so.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above. The Contractor must correct any defect or failure of the Equipment within 30 days or grant the State a refund equal to the amount the State paid for the Equipment or, if such has not been individually priced, the manufacturer's suggested retail price for the Equipment.

Except where the Contractor's breach of a warranty makes it not possible for the State to do so, the State will return the affected Equipment to the Contractor in the case of a refund under the previous paragraph.

Indemnity for Property Damage and Bodily Injury. The Contractor must indemnify the State for all liability and expenses resulting from bodily injury to any person (including injury resulting in death) and damage to tangible or real property arising out of the performance of this Contract, provided that such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, the Contractor's Personnel, or its subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, its other contractors, or its agents.

Limitation of Liability. Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the State against claims made against it or for damages to the State caused by the Contractor's negligence or other tortious conduct.

PART FIVE: ACCEPTANCE AND MAINTENANCE

Acceptance. There will be no formal acceptance procedure unless the ITB Documents expressly provide otherwise. If the ITB Documents do not provide otherwise, the acceptance procedure will be an informal review by the Contract Representative to ensure that each Deliverable complies with the requirements of this Contract. The Contract Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable does not meet the requirements of this Contract. If the Contract Representative issues a letter of noncompliance, then the Contractor will have 30 calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the Contract Representative has issued a noncompliance letter, the affected Deliverables will not be accepted until the Contract Representative issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30 day period, the Contract Representative will issue the acceptance letter within 15 calendar days.

If the Contractor fails to bring a Deliverable into compliance after 60 calendar days from the start of the acceptance period, the Contractor will be in default and will not have a cure period.

Passage of Title. Title to any Deliverable will pass to the State on delivery. All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State.

PART SIX: CONSTRUCTION

Entire Document. This Contract is the entire agreement between the parties with respect to its subject matter and supersedes any previous statements or agreements, whether oral or written, as well as any contemporaneous oral agreement.

Binding Effect. This Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

Amendments – Waiver. No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at anytime to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms. Waivers must be in writing to be effective. And either party may at any later time demand strict performance.

Severability. If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

Construction. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

Headings. The headings used herein are for the sole sake of convenience and will not be used to interpret any section.

Notices. For any notice under this Contract to be effective, it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract, unless such party has notified the other party, in accordance with the provisions of this section, of a new mailing address. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally.

Continuing Obligations. The terms of this Contract will survive the termination or expiration of the time for performance and the time for meeting any final payment of compensation, except where such creates an absurdity.

PART SEVEN: LAW AND COURTS

Compliance with Law. The Contractor must comply with all applicable federal, state, and local laws while performing under this Contract.

Drug-Free Workplace. The Contractor must comply with all applicable state and federal laws regarding keeping a drug-free workplace. The Contractor must make a good faith effort to ensure that all of the Contractor's Personnel, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

Conflicts of Interest. None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. But this will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

Ohio Ethics Law and Limits on Political Contributions. The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor also certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

Security & Safety Rules. When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

Unresolved Finding for Recovery. If the Contractor was subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on the date the parties sign this Contract, the Contract is void. Further, if the Contractor is subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on any date on which the parties renew or extend this Contract, the renewal or extension will be void.

Equal Employment Opportunity. Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including but not limited to Ohio revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the

affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: http://business.ohio.gov/efiling/.

Injunctive Relief. Nothing in this Contract is intended to limit the State's right to injunctive relief, if such is necessary to protect its interests or to keep it whole.

Assignment. The Contractor may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of the State. The State is not obligated to provide its consent to any proposed assignment.

Antitrust. The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

Legal Compliance. The Contractor must comply with all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control, in the performance of this Contract.

Governing Law. This Contract will be governed by the laws of Ohio, and venue for any disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

ATTACHMENT FOUR
BID COMMITMENT

THIS BID COMMITMENT (the "Bid Commitment") commits the Bidder identified below to the Bid it submitted in response to the State's ITB ACQ1011, entitled **Dell Equipment for DOLC Application Modernization Data Center Configuration** which the State of Ohio ("State") issued through the Department of Administrative Services, IT Procurement Services on behalf of the Ohio Department of Commerce.

If the State accepts the Bid within 90 days of the Bid opening date or before written notice from the Bidder of its withdrawal of the Bid after the 90-day acceptance period, it will issue a letter of award ("Award Letter") to the Bidder. The Award Letter will identify the items ("Deliverables") awarded to the Bidder and will be part of the agreement between the Bidder and the State ("Contract"). The entire Contract will consist of the State's Award Letter, the ITB, including all attachments, written amendments to this ITB, the Bid of the successful Bidder, and written, authorized amendments to that Bid. It also will include any materials incorporated by reference in the above documents and any purchase orders issued under the Contract. If there are conflicting provisions among the documents that make up the Contract, the order of precedence for the documents will be as follows:

1. The Award Letter
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Bid, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Bid, to the extent they are not inconsistent with any of the foregoing.

Notwithstanding the order listed above, amendments signed by authorized representatives of the Bidder and the State after the Contract is formed may expressly change the provisions of the Contract. If they do so, then the most recent of them will take precedence over anything else that is part of the Contract.

This Bid Commitment binds the Bidder upon its submittal to the State as part of the Bid, and it will continue to bind the Bidder for the longer of 90 days after the Bid opening date or the Bidder's withdrawal of its Bid. Additionally, if the State awards the Contract to the Bidder before the Bidder properly withdraws the Bid, the Contract will remain in force as provided in the Attachment Three of the ITB, Terms and Conditions.

FOR THE BIDDER

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT FIVE
BIDDER CERTIFICATION FORM

The Bidder certifies that the following statements are true and accurate:

1. The Bidder's proposed Deliverables meet all the requirements of this ITB.

2. The Bidder has not taken any exception to the terms and conditions in this ITB.

3. The Bidder will comply with all federal and Ohio laws, rules, and regulations that are in force currently or anytime during the term of the Contract.

4. The Bidder is not now subject to an “unresolved” finding for recovery under Revised Code Section 9.24, and the Bidder will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this ITB.

5. The Bidder will be the prime Contractor if a Contract is awarded based on this Bid.

6. The Bidder will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment One or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment One without express written authorization from the State.

7. The Bidder affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.

8. This Bid is genuine and not a sham and Bidder has not colluded, conspired, or agreed, directly or indirectly, with anyone or any entity to limit competition under this ITB or to set or otherwise control the prices, products, or services offered to the State under this ITB.

9. The Bidder certifies it and its subcontractors will perform all services only at the following location(s) within the United States:

Address 1:	**Address 2:**

Address 3:	**Address 4:**

(Attach an additional sheet if more addresses need to be listed.)

10. The Bidder certifies its and each of its subcontractors' principal places of business are located at the addresses identified in the Vendor Information Form(s) included with this Bid.

11. The Bidder certifies its responses to the following statements are true and accurate. The Bidder's answers apply to the last seven years. Please indicate yes or no in each column.

Yes/No	Description
	The Bidder has had a contract terminated for default or cause.
	The Bidder has been assessed any penalties in excess of $10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity).
	The Bidder was the subject of any governmental action limiting the right of the Bidder to do business with that entity or any other governmental entity.
	Trading in the stock of the company has ever been suspended with the date(s) and explanation(s).
	The Bidder, any officer of the Bidder, or any owner of a 20% interest or greater in the Bidder has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
	The Bidder, any officer of the Bidder, or any owner with a 20% interest or greater in the Bidder has been convicted of a felony or is currently under indictment on any felony charge.

If the answer to any item above is affirmative, the Bidder must provide complete details about the matter. While an affirmative answer to any of these items will not automatically disqualify a Bidder from consideration, at the sole discretion of the State, such an answer and a review of the background details may result in a rejection of the Bid. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Bidder's performance under the Contract, and the best interests of the State.

12. The Bidder certifies neither it nor any of its people that may work on or benefit from the Contract through the Bidder has a possible conflict of interest (e.g., employed by the State of Ohio, etc.) other than the conflicts identified immediately below:

Potential Conflicts (by person or entity affected)

(Attach an additional sheet if more space is need.)

The Bidder acknowledges the State may reject a Bid in which an actual or apparent conflict is disclosed. And the State may cancel or terminate the Contract for cause if it discovers any actual or apparent conflict of interest the Bidder did not disclose in its Bid.

13. The Bidder's personnel working on the Contract will have a valid I-9 form on file with the Bidder and will have presented valid employment authorization documents, if they are not United States citizens.

14. The Bidder agrees that (1) it will conduct criminal background checks as provided in section 5104.013 of the Ohio Revised Code on Contractor and subcontract personnel who will perform sensitive services (as defined below), and (2) no ineligible personnel will perform sensitive services under this Contract. “Ineligible Personnel” means any person who (a) has been convicted at any time of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has entered into a pre-trial diversion or similar program in connection with a prosecution for such offense, (b) is named by the Office of Foreign Asset Control (OFAC) as a Specially Designated National, or (c) has been convicted of a felony. “Sensitive Services” means those services that (i) require access to Customer/Consumer Information, (ii) relate to the State’s computer networks, information systems, databases or secure facilities under circumstances that would permit modifications to such systems, or (iii) involve unsupervised access to secure facilities (“Sensitive Services”). Upon request, Contractor will provide written evidence that all of Contractor’s and subcontractor’s personnel providing Sensitive Services have undergone a criminal background check and are eligible to provide Sensitive Services. In the event that Contractor does not comply with the terms of this section, the State may, in its sole and absolute discretion, terminate this Contract immediately without further liability.

15. The Bidder certifies that they are an authorized Dell reseller in good standing, and have provided documentation from the appropriate Dell representative supporting this claim.

The Person signing below is an authorized representative of the Bidder and certifies to the truth and accuracy of the representations made above.

_____
Signature

_____
Name

_____
Title

_____
Company Name of Bidder

_____
Company D-U-N-S Number

ATTACHMENT SIX
BUY OHIO AND BUY AMERICAN CERTIFICATION

Those bidders claiming preference for Domestic Source End Products and/or the Ohio preference, pursuant to Revised Code Sections 125.09 and 125.11 and Administrative Code Section 123:5-1-06 must complete the following information. Bidders who qualify as an "Ohio" bidder (offer an Ohio product or who have significant Ohio economic presence) or who qualify as a Border State bidder are eligible to receive a five percent (5%) preference over non-Ohio/Border state bidders. The state reserves the right to clarify any information during the evaluation process. **BIDDERS MUST COMPLETE THIS CERTIFICATION TO RECEIVE THE PREFERENCE.**

A. DOMESTIC PREFERENCE (BUY AMERICA): [Not applicable to "Excepted Products"]

1. Where is each product/services being offered mined, raised, grown, produced or manufactured?

   ☐ United States: _____(State) ☐ Canada ☐ Mexico (Go to B-1)

   ☐ Other: (Specify Country)_____ (Go to A-2)

2. End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United States. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued.

   ☐ Yes (Go to Section B-1) ☐ No (Go to Section A-3)

3. The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy America Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.

   _____(Item) _____(Country of Origin)

   _____(Item) _____(Country of Origin)

A domestic end source product is deemed to be excessively priced if it exceeds the cost of the foreign product by more than 6%. Pursuant to FAR, Part 25, the state of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The contractor, their subcontractor(s) and any agent of the contractor or subcontractor must not acquire any supplies or services originating from sources within, or that were located in or transported from or through Cuba, Iran, Iraq, Libya, North Korea, Sudan Territory of Afghanistan controlled by the Taliban, or Serbia (excluding the territory of Kosovo).

B. OHIO PREFERENCE (BUY OHIO):

1. The products/services being offered are raised, grown, produced, mined or manufactured in Ohio.

   ☐ Yes (Go to C) ☐ No (Go to B-2)

2. Bidder has significant economic presence within the state of Ohio. ☐ Yes (Answer a, b, c, d below) ☐ No (Go to B-3)

   a) Bidder has paid the required taxes due the state of Ohio ☐ Yes ☐ No

   b) Bidder is registered with the Ohio Secretary of State

   ☐ Yes (Charter/Registration No.: _____) ☐ No

   Questions regarding registration should be directed to (614) 466-3910 or visit their web site at:

   http://www.sos.state.oh.us/

   c) Bidder has ten or more employees based in Ohio or border state. ☐Yes ☐ No (Go to B-2d)

   d) Bidder has seventy-five percent or more employees based in Ohio or border state. ☐ Yes ☐ No (Go to B-3)

3. Border state bidder:

   ☐ Yes (Specify which state then go to B-2c): ☐ KY ☐ MI ☐ NY ☐ PA ☐ IN ☐ No (Go to B-4)

4. Border state bidder: mined products mined in respective border state ☐ Yes ☐ No ☐ Not Applicable

ATTACHMENT SEVEN

COST SUMMARY

Bidders responding to the ITB must submit a complete Cost Summary.

Any corrections or changes made to the figures in the SINGLE UNIT COST or TOTAL COST columns of the Table must be initialed or the bid will be disqualified.

THE GRAND TOTAL FOR ALL LINE ITEMS WILL BE THE BASIS FOR DETERMINING THE CONTRACT AWARD.

The cost includes F.O.B. destination, free inside delivery to the location designated by the Agency at mutually agreeable times with inside delivery to areas of the Agency(s) choosing. Costs must include all packing, transportation and insurance charges.

A cost must be provided for each item on the cost summary. Failure to provide a cost for any required line item will result in the disqualification of the bidder's response. Additionally, the cost summary must not include exceptions, additional terms and conditions or assumptions.

Additional purchases made after the initial order will be procured at the single unit cost.

Dell Configuration Reference Number	Description	Single Unit Cost		Estimated Quantity		Total Cost
639190237	Dell M1000e Chassis with 6 Virtualization Blades and 2 SQL Blades and related networking	**$**	**X**	1	**=**	**$**
639190237	Dell M1000e Chassis with 6 Virtualization Blades and 2 SQL Blades and related networking	**$**	**X**	1	**=**	**$**
639184597	Dell M1000e Chassis with 8 Virtualization Blades and related networking	**$**	**X**	1	**=**	**$**
637452501	Dell Racks	**$**	**X**	2	**=**	**$**
637451587	Ethernet Switch Interconnect	**$**	**X**	2	**=**	**$**

637493584	Fibre Channel Switch	**$**	**X**	2	**=**	**$**
DLA40773	Dell Compellent SAN Solution - Production Environment	**$**	**X**	1	**=**	**$**
DLA42238	Dell Compellent SAN Solution - Dev/Staging Environment	**$**	**X**	1	**=**	**$**
DLA42228	Dell Compellent SAN Solution - Remote Data Environment	**$**	**X**	1	**=**	**$**
Grand Total for All Line Items					**=**	**$**