

**INVITATION TO BID**  
**By**  
**REVERSE AUCTION**  
  
**MBE SET-ASIDE**

**ITB NUMBER: ACQ1006**  
**DATE ISSUED: April 29, 2010**

The State of Ohio, through the Department of Administrative Services, Office of Procurement Services, for the Ohio Department of Transportation (ODOT), is requesting the submission of Qualification Summaries to participate in a Reverse Auction for:

**Desktop and Laptop Computers, Accessories and Services**

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

<b>INQUIRY PERIOD BEGINS:</b>	<b>April 29, 2010</b>
<b>INQUIRY PERIOD ENDS:</b>	<b>May 10, 2010</b>
<b>QUALIFICATION SUMMARY</b>	
<b>OPENING DATE:</b>	<b>May 12, 2010</b>
<b>OPENING TIME:</b>	<b>1:00 P.M.</b>
<b>OPENING LOCATION:</b>	<b>Department of Administrative Services General Services Division 4200 Surface Road Columbus, Ohio 43228</b>

This ITB consists of five parts and six attachments, totaling 36 consecutively numbered pages. Supplements also may be attached to this ITB with a beginning header page and an ending trailer page. Please verify that you have a complete copy.

**NOTICE:** This Invitation to Bid (ITB) will be conducted by Reverse Auction. Bidders should carefully read the General Instructions in Part Three (page 4) prior to proceeding. The responses received will be for submission of documentation only, to pre-qualify Bidders to participate in a Reverse Auction. The Reverse Auction will tentatively be held on May 18, 2010. Time frames will be determined and stated in the actual invitation to the Reverse Auction. The Reverse Auction platform will be available for placeholder bids as stated in the invitation issued by HedgeHog Inc. to qualified Bidders. Products offered in this Qualification Summary will be the same products bid upon during the Reverse Auction and the same products supplied, upon award of any ensuing contract. **This Qualification Summary does not require submission of pricing at this time.** Prospective Bidders shall complete all requested information on the Item Identification Form to be included with the Qualification Summary .

## PART ONE: EXECUTIVE SUMMARY

**Purpose.** This is an Invitation to Bid ("ITB") by Reverse Auction under Section 125.01 and 125.072 of the Ohio Revised Code (the "Revised Code") and Rule 123:5-1-12 of the Ohio Administrative Code (the "Administrative Code"). The Ohio Department of Transportation (the "Agency") has asked the Department of Administrative Services, Office of Procurement Services to solicit bids ("Bids") for desktop and laptop computers, accessories and services (the "Deliverables"), and this ITB is the result of that initiative.

If a Reverse Auction 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 Qualification Summary to participate in the Reverse Auction, how the State will evaluate the Bids during the Reverse Auction, 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, 2010, whichever is sooner. The State may choose to renew the Contract for two additional six month periods through June 30, 2011.

**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.

**The State may reject any Qualification Summary 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 Qualification Summary if the Bidder's Deliverables fail to meet the requirements of this ITB.**

**Background.** The Ohio Department of Transportation (ODOT) requests the purchase of desktop and laptop computers, accessories and services.

**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, Office of Procurement Services (the "State"), is releasing this ITB to enter into a single Contract to acquire the desktop and laptop computer hardware, accessories and services as specified herein. The equipment and services will be delivered to the thirteen (13) Ohio Department of Transportation (ODOT) offices throughout the State of Ohio.

**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.

The equipment and services must be delivered by the agreed upon schedule to the thirteen (13) ODOT facilities throughout the State.

**The only computer manufacturers accepted for this Bid are Dell and Hewlett-Packard.**

	<u>Quantity</u>
Standard Desktops	2399
Specialty Desktops	693
Standard Desktop Laptops	570
Standard Mobile Laptops	25
Laptop cases for above laptops	481
Port replicators for above laptops	570

**Services:**

The following services are required. Pricing will be required during the Reverse Auction and will be used in the evaluation for the lowest bid.

Green Delivery per machine

The following services are optional. Pricing may be entered during the Reverse Auction, but will not be used in the evaluation for the lowest bid. ODOT will have the option to choose these services.

Four (4) year warranty on desktops including Computrace	per desktop
Four (4) year warranty on laptops including Computrace	per laptop
Five (5) year warranty on desktops including Computrace	per desktop
Five (5) year warranty on laptops including Computrace	per laptop
Certified disposal services for old equipment	per machine
Warehousing of equipment to facilitate deployment schedule	per machine
Asset tagging	per machine
Loading of ODOT standard image prior to delivery	per machine
Assistance or total deployment services	per hour

**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 Qualification Summary 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 Qualification Summary 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:	April 29, 2010
Inquiry Period Begins:	April 29, 2010
Inquiry Period Ends:	May 10, 2010, at 8:00 a.m.
Qualification Summary Due Date:	May 12, 2010, at 1:00 p.m.

Estimated Dates

Notification and Training for Reverse Auction	May 14-18, 2010
Reverse Auction Event	May 18, 2010
Contract Award:	May 21, 2010

There are references in this ITB to the Qualification Summary 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 Qualification Summaries are due and not just the date.

## PART TWO: STRUCTURE OF THIS ITB

**Organization.** This ITB is organized into five parts and has six attachments. The parts and attachments are listed below. There also may be one or more supplements to this ITB listed below.

### Parts:

Part One	Executive Summary
Part Two	Structure of this ITB
Part Three	General Instructions
Part Four	Evaluation of Qualification Summaries and the Reverse Auction Event
Part Five	Award of the Contract

### Attachments:

Attachment One	Requirements and Special Provisions
Attachment Two	Requirements for Qualification Summaries
Attachment Three	General Terms and Conditions
Attachment Four	Bid Commitment
Attachment Five	Bidder Certifications
Attachment Six	Item Identification Form

**Supplements:** None

## 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:

Dennis Kapenga  
Department of Administrative Services  
General Services Division  
Office of Procurement 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 Bureau of Workers' Compensation and be the primary contact for the Contract. The State will designate the Contract Representative in writing after the Contract award.

### Description of the Reverse Auction Process.

**Definition of Reverse Auction.** Reverse Auction is a purchasing process in which offerors submit Bids in competition to sell services or supplies in an open environment via the internet. The auction itself is an invitation-only, timed event that is open to Bidders who have been prequalified.

**Reverse Auction as a Competitive Selection Process.** Ohio Revised Code sections 125.01 and 125.072 authorize the use of Reverse Auction as a form of competitive selection.

**Definition of Bid.** In the context of Reverse Auction, the Bid or Bid response means all documents, whether attached or incorporated by reference, supplied by the Bidder in response to an ITB by Reverse Auction, including a Qualification Summary and the lowest price submitted by the Bidder during the auction event.

**Chronology of the Reverse Auction Process.**

The Reverse Auction process includes the steps listed below:

- (1) Notice of ITB by Reverse Auction;
- (2) Bid Preparation;
- (3) Qualification Summary Submittal;

The following are in Part Four:

- (4) Evaluation of Qualification Summaries;
- (5) Invitation to the Reverse Auction;
- (6) Event Preparation and Bidder Training;
- (7) Auction Event;
- (8) Evaluation of Bids and Bidders;

The following is in Part Five:

- (9) Contract Award

**Notice of ITB by Reverse Auction (Step 1).**

The State posts bid opportunities on the State Procurement web site at <http://procure.ohio.gov>. Bidders may also register on-line to be notified automatically of bid opportunities. The ITB document may be downloaded directly from the web site.

**Bid Preparation (Step 2).**

**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.

**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 ACQ1006 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 Qualification Summary 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 Qualification Summaries are due, and it is each prospective Bidder's responsibility to check for announcements and other current information regarding this ITB.

**Damages Arising from Bid Specifications.** A Bidder may not be compensated for damages arising from inaccurate or incomplete information in the ITB specifications or from inaccurate assumptions based upon the specifications.

**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.

**Certifications.** When submitting a Qualification Summary, the Bidder must sign and submit the Bidder Certification Form that is included as Attachment Six 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 Qualification Summary 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.

**Qualification Summary Submittal (Step 3).**

**Qualification Summary Contents.** Each Bidder must submit two (2) completed, sealed, and signed copies of its Qualification Summary in an opaque envelope. The Bidder must clearly mark the exterior of the package "Dell Latitude Laptops – Bid – ACQ1006".

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 Qualification Summary, the hard copy will control, and the State will base its evaluation of the Qualification Summary on the hard copy.

**Qualification Summary Instructions.** Each Qualification Summary 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 Qualification Summaries' contents and formatting. The State wants clear and concise Qualification Summaries, but Bidders must answer questions completely and meet all the ITB's requirements.

**Submission Address.** Qualification Summaries are due no later than 1:00 p.m. on the Qualification Summary due date. State will reject Qualification Summaries submitted by email or fax. Bidders must submit their Qualification Summaries to:

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

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

**Review and Acknowledgement.** Each Bidder must carefully review the requirements of this ITB and the contents of its Qualification Summary. Once opened, Qualification Summaries cannot be altered or withdrawn, except as allowed by this ITB.

By submitting a Qualification Summary, 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.

**Property and Retention.** All Qualification Summaries 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 Qualification Summary 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 Qualification Summaries will be open to the public after Contract award.

The State will retain all Qualification Summaries, 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 Qualification Summaries and any copies of them.

**Qualification Summary Withdrawal.** If a Bidder withdraws its Qualification Summary and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the Bidder. The omission of a Bidder's signature or initials to a modification may result in the Bid being determined to be not responsive.

A Bidder may withdraw its Qualification Summary, by written request, any time after DAS receives the Qualification Summary and before the opening date and time.

**Waiver of Defects.** The State may waive any defects in any Qualification Summary 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.

**Prospective Bidders may not prepare or modify their Qualification Summaries on State property.**

**Location of Data.** Unless the State agrees otherwise in writing, the selected Bidder and its subcontractors must do all work related to the Contract and keep all State data at the location(s) disclosed in the Bidder's Bid. If Attachment Two contains any restrictions on where work under the Contract may be done or where any State data may be kept, the State may reject any Qualification Summary proposing to do any work or make State data available outside of those geographic restrictions.

#### **PART FOUR: EVALUATION OF QUALIFICATION SUMMARIES AND THE REVERSE AUCTION EVENT**

**Qualification Summary Opening.** The State will open the Qualification Summaries on May 12, 2010, at 1:00 p.m. A State Procurement Representative will open the Qualification Summaries in the presence of a representative of the Auditor of State. After the opening, a Procurement Representative will begin the initial review of the Qualification Summaries.

After award of the Contract, Qualification Summaries and the Reverse Auction bidding details are public records, as defined in Revised Code Section 149.43, and they are subject to all laws applicable to public records.

#### **Evaluation of Qualification Summaries (Step 4).**

The Qualification Summary evaluation process may consist of up to three phases:

1. Initial review
2. Clarifications and Corrections
5. Determination of the Qualified Bidders List

**Initial Review.** The Procurement Representative will review all Qualification Summaries for their format and completeness. The Procurement Representative normally rejects incomplete or incorrectly formatted Qualification summaries, 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 Qualification Summary due to lateness, the Procurement Representative will not open it or evaluate it for format or completeness.

**Rejection of Qualification Summaries.** The State may reject any Qualification Summary that is late, not in the required format, does not address all the requirements of this ITB. The State also may reject any Qualification Summary 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 Qualification Summaries, and seek to make the procurement through a new ITB or other means.

**Clarifications and Corrections.** During the evaluation process, the State may request clarifications from any Bidder with a Qualification Summary under active consideration and may give any Bidder the opportunity to correct defects in its Qualification Summary. 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 Qualification Summary without the clarification, or disqualify the Qualification Summary.

**Withdrawal before Auction Event.** A Bidder may by written request withdraw its Qualification Summary before the auction event, if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty. "Inadvertent" means inattentive or unobservant; heedless; due to oversight; unintentional. If DAS suspects that the qualifications summary contains a mistake, DAS may ask the Bidder for written confirmation of its summary.

**Prospective Bidders may not prepare or modify their Qualification Summaries on State property.**

**Qualified Bidders List.** The Procurement Representative will use information from the Qualification Summaries to qualify Bidders for the Reverse Auction event. The State reserves the right to exclude Bidders who are deemed not responsive or not responsible. Reasons for exclusion may include, but are not limited to: late Qualifications Summary submittal, failure to include mandatory information or samples, and lack of Minority Business Enterprise (MBE) certification for a MBE set aside bid.

#### **Role of HedgeHog Inc.**

HedgeHog Inc. has been contracted (agent) to host and manage the Online Reverse Auction event via the OhioDAS ProcurePort at <https://ohiodas.hedgehog.com>

HedgeHog Inc. will manage all services to support this online event including:

- Reception of all Bidders Registering on the OhioDAS ProcurePort (<https://ohiodas.hedgehog.com>) in order to participate in the Online Reverse Auction event.
- Contact qualified bidders regarding their participation in the online bidding event based on specific state of Ohio DAS ProcurePort requirements.
- Answer all questions relating to the online bidding process and bidding platform.
- Train invited bidders, in advance of the scheduled live online Reverse Auction event, on using the bid platform through a demonstration (mock) open event.
- Conduct the live Online event in accordance with the requirements specified in this document.
- Provide final bid reports to the state of Ohio DAS at the conclusion of the live online reverse auction event.
- HedgeHog, Inc Contact Information: M-F 8:30 AM to 5:00 PM EST \_ 1-800-208-2335 / [helpdesk@hedgehog.com](mailto:helpdesk@hedgehog.com) (24/7)

#### **Invitation to the Reverse Auction (Step 5).**

DAS or its agent shall provide written notice to each Bidder through postal mail or electronic means regarding the Bidder's inclusion or exclusion from the qualified Bidders list. The notice to excluded Bidders shall include the reason(s) for exclusion. Notice to qualified Bidders shall include an invitation to the auction event, with the date and time of the event and instructions for participation. The date and time in this invitation shall supersede the estimated date and time written in the ITB.

**Event Preparation and Bidder Training (Step 6).**

DAS or its agent shall work with the Bidder to prepare for the auction event. Preparation may include, but is not limited to: configuration of the auction computer system, testing of the Bidder interface, delivery of event procedure manuals and other documentation, and training.

**Auction Event (Step 7).****Participation by Invitation Only.**

Only those Bidders on the qualified Bidders list will be allowed to participate in the auction event.

**Event Support.**

DAS or its agent will provide the necessary administrative support to ensure that the integrity of the auction event is not compromised.

**Event Record.**

DAS or its agent will keep an event record, which will include the prices offered by the Bidders. The event record will become part of the contract documents and a public record at the conclusion of the event.

**Non-Disclosure of Competitors.**

The Bidder interface will be configured such that a Bidder will not know the identity of competing Bidders until the event is complete.

**Start of Event.**

DAS or its agent will begin the event through an electronic notification to all qualified Bidders.

**Price Submittals.**

Bidders may submit multiple prices during the Reverse Auction event. The lowest price offered will become the price portion of the Bid response. Prices must be submitted by, or under the direction of, an authorized representative of the Bidder as designated in the qualification summary.

**Tie Bids.**

In the event that multiple Bidders submit identical prices for the same lot, the Bid received first will be considered the lowest. Any other identical bids received later will be considered in the order received, as determined by the official clock that the state designates.

**Unit Costs.** Bidders must provide a unit cost during the Reverse Auction for each required line item on the Item Identification Form. 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 leave the line item blank. Optional items will not be used in the evaluation of low Bidder. Unless this ITB expressly provides otherwise, all line items are mandatory. If the specifications are provided by category, the Contract will be awarded by category. 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.

**Initial Bid Ceiling.** Initial bid ceiling values may be set and displayed in the auction software. If ceiling values are set, the values will either be expressly provided in the ITB specifications or during the Bidder training period.

**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.

**Corrections after Reverse Auction Bids.** After Reverse Auction bids are placed, 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 give the Bidder an unfair competitive advantage.

**Event Conclusion and Extensions.** The auction event will have a scheduled stop time. The event may be extended if bids are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extensions shall be contained in the event procedure manual that will be distributed to all qualified Bidders. The event will conclude at either the scheduled stop time or the time at which all extensions are completed, whichever is later.

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

**Bids are Firm.** Once the Reverse Auction closes, 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.

#### **Evaluation of Bids and Bidders (Step 8).**

The contract will be awarded to the lowest responsive and responsible Bidder as determined by DAS. To protect the integrity of the competitive selection process, bids will be closed for public review once the evaluation and award process begins. All information related to this ITB will be available via Public Records once the Contract is awarded.

**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 Qualification Summaries to determine if a Bidder's offering is for a "domestic source end product," as defined in 41 USC Sections 10a-d. Any Qualification Summary 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 Five. 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 Qualification Summaries 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 will 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 will 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 Five. If the Bidder fails to complete the Buy Ohio Certification, the State will presume the Bidder's offering does not qualify for the preference.

**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 with the Qualification Summary.

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.

**Large quantity desktop delivery references**

Bidders must provide at least two (2) references in which 500 or more desktops were delivered in a 90-day period. These references should document the Bidder's highest volumes. Bidder must provide the contact name, telephone number and a description qualifying the reference for each reference given. Bidder must also provide an alternate contact name and telephone number for each reference. Bidder references must demonstrate that it has the delivery capacity to satisfy the State's requirements.

**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 Qualification Summaries. 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 the Qualification Summary, 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 Qualification Summary 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.

**Homeland Security.** Under Ohio's anti-terrorism legislation, effective April 14, 2006, the selected Bidder must complete a Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization to certify that the Bidder has not provided material assistance to any terrorist organization listed on the Terrorist Exclusion List. The form and the Terrorist Exclusion List are available on the Ohio Homeland Security Website. The form must be submitted with the Bidder's Qualification Summary. If a Bidder answers yes or fails to answer any question on the form, the State may not award the Contract to that Bidder. The Bidder may request the Department of Public Safety to review such a denial of an award. More information concerning this law is available at: <http://www.homelandsecurity.ohio.gov>.

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

## **PART FIVE: AWARD OF THE CONTRACT**

**Contract Award (Step 9).** 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 category or as a whole. If the State awards the Contract by category, it may award multiple Contracts. In awarding multiple Contracts by category, the State will make the awards by lowest Bidder for each category 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 State's Award Letter, this ITB, including all attachments and written amendments, The Contractor's Qualification Summary as amended, clarified, and accepted by the State and the Contractor's successful 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 State's Award Letter
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Qualification Summary, as amended, clarified, and accepted by the State;
5. The Contractor's successful Bid during the Reverse Auction; and
6. The documents and materials incorporated by reference in the Contractor's Qualification Summary, to the extent that 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.

**Protests.** Any Bidder that is not in agreement with the competitive bidding process used to make the award may file a protest. The protest must be timely, and the Bidder must submit it in writing to the Administrator of IT Procurement Services. Any attempt by the Bidder to file a protest with anyone other than the Administrator of IT Procurement Services may result in the disqualification of the Bidder. A decision to stay the proceedings or reverse an award will be at the sole discretion of the Administrator of IT Procurement Services, whose decision will be final, unless anyone with standing challenges the decision in a court of competent jurisdiction.

## 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.

**Specifications. The following specifications must be strictly followed:**

**The only computer manufacturers accepted for this Bid are Dell and Hewlett-Packard.**

For the following desktop and laptop specifications, the Bidder must provide manufacturer and model information on the Item Identification form and sample itemized manufacturer configurations.

### Standard Desktop, Small Form Factor (estimated quantity 2399)

Processor	Intel Core i5-650 3.2GHz,4MB L3 cache,2 cores,4 threads, 32nm
Label	Intel Core i5 vPro
Chipset	Intel Q57 Express
Memory	4GB DDR3 (2DIMMs x 2GB) PC3-10600
Video Graphics	Intel GMA HD Graphics
Network Adapter	Intel 82578DM Gigabit
Hard Drive	160GB 7200RPM SATA
Optical Drive	DVD+/-RW SATA
Back Panel Connectors	Network, Line-In, Line-Out, USB 2.0/3.0, VGA, DVI-I, DisplayPort OPTIONAL: Parallel and Serial
Security Features	3 year Computrace Plus license enabled in BIOS, TPM 1.2 Chip
Environmental Compliance	80 Plus Power Supply Silver or Gold rating, EPEAT Silver or Gold rating, Energy Star 5.0 certification
Operating System	(32 and 64 bit) Microsoft Windows 7 Pro Microsoft Windows XP Pro SP3 via Vista Business/Windows 7 downgrade rights
Keyboard & Mouse	both USB and optical mouse
Warranty	3 year parts and labor

### Specialty Desktop Minitower (estimated quantity 693)

Processor	Intel Core i7-860 2.8GHz,8MB L3 cache,4 cores,8 threads, 45nm
Label	Intel Core i7 vPro
Chipset	Intel Q57 Express
Memory	4GB DDR3 (2DIMMs x 2GB) PC3-10600
Video Graphics	256MB discrete graphics (PCIe) with dual VGA or DVI-I OPTIONAL: S-Video out
Network Adapter	Intel 82578DM Gigabit
Hard drive	250GB 7200RPM SATA
Optical drive	DVD+/-RW SATA
Back Panel Connectors	Network, Line-In, Line-Out, USB 2.0/3.0, VGA, DVI-I, DisplayPort OPTIONAL: Parallel and Serial
Security Features	3 year Computrace Plus license enabled in BIOS, TPM 1.2 Chip
Environmental Compliance	80 Plus Power Supply Silver or Gold rating, EPEAT Silver or Gold rating, Energy Star 5.0 certification (desirable)
Operating System	(32 and 64 bit) Microsoft Windows 7 Pro Microsoft Windows XP Pro SP3 via Vista Business/Windows 7 downgrade rights
Keyboard & Mouse	both USB and optical mouse
Warranty	3 year parts and labor

Standard Desktop Laptop (estimated quantity 570)

Processor	Intel Core i7-620M 2.53GHz,4M L2 cache,2 cores,4 threads
Label	Intel Core i7 vPro
Chipset	Intel Q57M Express
Memory	4GB DDR3 (2 DIMM x 2GB) PC3-10600
Video Graphics	Discrete video card with minimum 256MB DDR3
LCD Size and Resolution	~15.4" resolution 1366 x 768 minimum
Networking	Intel 82577LM Gigabit NIC Intel Centrino Advanced-N 6000 wireless 802.11n Bluetooth v2.1
Hard drive	160 GB 7200 RPM SATA
Optical drive	DVD+/-RW SATA
Security Features	3 year Computrace Plus license enabled in BIOS, TPM 1.2 Chip
Environmental Compliance	EPEAT Gold or Silver, Energy Star 5.0 certification
Battery	8 cell minimum
Weight	Under 7.5 lbs.
Operating System	(32 and 64 bit) Microsoft Windows 7 Pro Microsoft Windows XP Pro SP3 via Vista Business/Windows 7 downgrade rights
Warranty	3 year parts and labor

Standard Mobile Laptop (estimated quantity 25)

Processor	Intel Core i5-520M 2.4GHz,3M L2 cache,2 cores,4 threads
Label	Intel Core i5 vPro
Chipset	Intel Q57M Express
Memory	4GB DDR3 (2 DIMM x 2GB) PC3-10600
Video Graphics	Intel GMA HD Graphics
LCD Size and Resolution	~14" 1366 x 768 minimum
Networking	Intel 82577LM Gigabit NIC Intel Centrino Advanced-N 6000 wireless 802.11n Bluetooth v2.1
Hard drive	160GB 7200 RPM SATA
Optical drive	DVD+/-RW SATA
Security Features	3 year Computrace Plus license enabled in BIOS, TPM 1.2 Chip
Environmental Compliance	EPEAT Gold or Silver, Energy Star 5.0 certification
Battery	8 cell minimum
Weight	Under 6 lbs.
Operating System	(32 and 64 bit) Microsoft Windows 7 Pro Microsoft Windows XP Pro SP3 via Vista Business/Windows 7 downgrade rights
Warranty	3 year parts and labor

Pricing for the following accessories is required during the Reverse Auction and will be used to determine the low Bidder. The Bidder must provide manufacturer and model information on the Item Identification form.

Carrying cases for the above specified laptops (estimated quantity 481)

Docking station for the above specified laptops (estimated quantity 570)

Docking Station

The following specifications for the docking station are to be closely followed. All specifications listed may not all be currently available. The Bidder is to include the detailed manufacturer specifications for the docking station with the Qualification Summary.

Total USB Ports - 6 (5 Always on, 1 powered)  
 DisplayPort connectors - 2  
 DVI ports - 2  
 VGA ports - 1  
 Audio ports - 2  
 Parallel ports - 1  
 Serial ports - 1  
 PS2 ports -1  
 Monitor stand port - 1  
 LAN/Ethernet connection  
 eSATA port - 1  
 Industry Standard (Kensington) Lock Slot

Pricing for the following service is required during the Reverse Auction and will be used to determine the low Bidder.

**Green Delivery.** ODOT requires a green delivery. A green delivery is defined by little or no remaining packing materials at delivery. This can range from the Contractor making arrangements with the manufacturer to ship with minimal packing materials to the Contractor removing and properly disposing/recycling of all packing materials at delivery. The Bidder must describe on the Item Identification Form the steps that will be taken to meet this requirement.

Pricing for the following optional services may be entered during the Reverse Auction, but will not be used to determine the low Bidder. The agency may purchase any or all of the optional services at its discretion.

	<u>Pricing</u>
Fourth (4) year warranty on desktops including Computrace Plus license	per desktop
Fourth (4) year warranty on laptops including Computrace Plus license	per laptop
Fifth (5) year warranty on desktops including Computrace Plus license	per desktop
Fifth (5) year warranty on laptops including Computrace Plus license	per laptop
 Certified disposal services for old equipment This service must include pickup and responsible disposal/recycling of the old equipment and a certification that all data on the equipment has been destroyed. The Bidder must describe on the Item Identification Form the steps that will be taken to provide this service. Also include any information on residual value for the old equipment. This service may be subcontracted.	 per computer
 Warehousing of equipment to facilitate deployment schedule This service would include the Contractor taking delivery of the required equipment and delivering the equipment to the required locations using the ODOT deployment schedule. This could be an important service due to fiscal year funding. The Bidder must describe on the Item Identification Form the steps that will be taken to provide this service.	 per computer
 Asset tagging This service involves placing asset tags on the equipment and providing ODOT with an electronic copy of the required asset information. The Bidder must describe on the Item Identification Form the steps that will be taken to provide this service.	 per computer

Loading of ODOT standard image prior to delivery per computer

This service would involve loading onto each computer an ODOT provided disk image. The Bidder must describe on the Item Identification Form the steps that will be taken to provide this service.

Assistance or total deployment services per hour

This service involves providing technical assistance to ODOT with the deployment of replacement computer hardware. The Bidder must provide an hourly estimate on the Item Identification Form for the replacement of a single computer.

**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, 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. 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.

**Delivery locations.** The following is a list of the thirteen (13) delivery locations for ODOT.

1885 N. McCullough St. Lima, Oh 45801  
317 E. Poe Rd. Bowling Green, Oh 43402  
906 N. Clark St. Ashland, Oh 44805  
2088 S. Arlington Rd. Akron, Oh 44306  
9600 Jacksontown Rd. S.E. PO Box 306 Jacksontown, Oh 43030  
400 East William St. Delaware, Oh 43015  
1001 St. Marys Ave. SR 29 PO Box 969 Sidney, Oh 45365  
505 South SR741 Lebanon, Oh 45036  
650 Eastern Ave PO Box 467 Chillicothe, Oh 45601  
338 Muskingum Dr. PO Box 658 Marietta, Oh 45750  
2201 Reiser Ave New Philadelphia, Oh 44663  
5500 Transportation Blvd. Garfield Heights, Oh 44125  
1980 W. Broad St. Columbus, Oh 43223

**Reimbursable Expenses.** None.

**Bill to Address.** Ohio Department of Transportation  
1980 W. Broad St. Columbus, Oh 43223  
Attn. Jim Burns

**Location of Data.** If the Contractor provides the certified disposal services, it must certify that no State data has been left on any piece of equipment prior to disposal or recycling.

## ATTACHMENT TWO: REQUIREMENTS FOR QUALIFICATION SUMMERIES

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

These instructions describe the required format for a responsive Qualification Summary. An identifiable tab sheet must precede each section of the Qualification Summary, and each Qualification Summary 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 Qualification Summary.

Each Qualification Summary must contain the following:

- Cover letter
- Vendor Information Form (OBM-3456)
- Bidder Certification Form
- Proof of Insurance
- W-9 Form
- DMA Form
- Certification of Specifications
- Bid Commitment
- References
- Sample Itemized Manufacturer Configurations
- Item Identification Form

The State requires an originally signed Cover Letter, Vendor Information Form, Bidder Certification Form, W-9, DMA, Certification of Specifications and Bid Commitment. All originally signed documents must be included in the same Qualification Summary binder, and the Bidder must indicate on the outside of the binder which Qualification Summary contains the originally signed documents. Additional copies of the Qualification Summary 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 Bidder must submit a signed and completed Vendor Information Form (OBM-3456) for itself and for each subcontractor the Bidder 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.

**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](http://www.irs.gov).

**DMA Form.** The Bidder must complete and submit a Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization (DMA) to certify that the Bidder has not provided material assistance to any terrorist organization listed on the Terrorist Exclusion List. The form and the Terrorist Exclusion List are available on the Ohio Homeland Security Website: <http://www.homelandsecurity.ohio.gov>.

**Certification of Specifications.** The Bidder must provide a signed statement on company letterhead stating that all products and or services identified on the Item Identification Form meet all specifications stated within the ITB.

**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 potential quantities of equipment and services required by the State (Part Four: Reference Checks).

**Sample Itemized Manufacturer Configurations.** The Bidder must include a sample itemized manufacturer configuration for each of the four computer configurations and the docking station in the ITB.

**Item Identification Form.** This ITB includes an Item Identification Form (Attachment Six). Bidders may not reformat this form. Each Bidder must complete the Item Identification Form in the exact format provided, since the State may reject any Qualification Summary with a reformatted Item Identification Form. All requested information must be provided.

The Item Identification Form must not include exceptions, additional terms and conditions, or assumptions unless requested on the form.

## ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS

### PART ONE: PERFORMANCE AND PAYMENT

**Statement of Work.** This ITB, the Contractor's Qualification Summary 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, 2010. The State may choose to renew the Contract for two additional six months periods through June 30, 2011.

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 lowest price submitted during the Reverse Auction event (the "Bid") for any Deliverables actually ordered by issuance of a valid State purchase order. The Contractor's right to payment is contingent on the complete and satisfactory performance under this Contract. Payment 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.

**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 final payment, 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/Workers' Compensation.** The Contractor must provide the following insurance coverage at Contractor's own expense throughout the term of this Contract:

1. Workers' compensation insurance, as required by Ohio law, and if some of the Work will be done Outside Ohio, the laws of the appropriate state(s) where any portion of the Work will be done.
2. Contractor shall maintain commercial General Liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 for each occurrence. The CGL shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury.
3. Contractor shall maintain commercial auto liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$500,000 for each accident.

The Contractor shall include the State as an additional insured under the CGL, commercial auto liability, and commercial umbrella (if any) policies. The insurance shall apply as primary over any other insurance or self-insurance programs afforded to the Contractor.

Contractor waives all rights against the State for damages to the extent these damages are covered by the CGL, commercial auto, or commercial umbrella liability insurance maintained pursuant to this Contract.

The certificate(s) 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 & Co..

The Contractor shall, for each policy required by this Contract provide the Contracting Authority with thirty (30) day prior written notice of cancellation, or non-renewal, except a ten (10) days notice for non-payment of premium. Any failure to comply with this reporting provision shall constitute a material breach of Contract and may be grounds for immediate termination of this Contract.

**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 its 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.

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. Additionally, neither party will be liable to the other for direct or other damages in excess of \$3,000,000 or two times the amount the State has paid under this Contract, whichever is greater. 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. In accordance with Executive Order 2007-01S, the Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflicts of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State. The Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of 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 laws of Ohio regarding equal employment opportunity and fair labor and employment practices, including but not limited to Section 125.111 of the Code, and all related Executive Orders of the Governor of Ohio.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS 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 Equal Opportunity Department web site: <http://www.das.ohio.gov/Eod/AEEO.htm>

**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.

**Declaration of Material Assistance/Non-Assistance to a Terrorist Organization.** In accordance with R.C. 2909.33(C), Contractor certifies that it meets one of the following conditions:

- (a) Contractor has **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; or
- (b) (1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year; and  
  
(2) Contractor has either precertified with the Office of Budget and Management, or has completed the attached Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

**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 during the Reverse Auction in response to the State's ITB ACQ1006, entitled Desktop and Laptop Computers, Accessories and Services which the State of Ohio ("State") issued through the Department of Administrative Services, Office of Procurement Services on behalf of the Ohio Department of Transportation.

If the State accepts the Bid within 90 days of the Reverse Auction 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 Qualification Summary of the successful Bidder and written authorized amendments to that Qualification Summary, the Bid of the successful Bidder,. 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 State's Award Letter
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Qualification Summary, as amended, clarified, and accepted by the State;
5. The Contractor's successful Bid during the Reverse Auction; and
6. The documents and materials incorporated by reference in the Contractor's Qualification Summary, to the extent that 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 Reverse Auction 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.
6. The Bidder will be the prime Contractor if a Contract is awarded based on this Bid.
7. 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.
8. The Bidder affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.
9. 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.
10. The Bidder  does  does not have facilities in Ohio or a qualifying border state.
11. If the Bidder does have facilities in Ohio or a qualifying border state, the facilities are:
  - Sales facilities
  - Manufacturing
  - Other facilities of the following nature: \_\_\_\_\_

The facilities are located at the following address(es):

Address 1:	Address 2:

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

The facilities consist of approximately \_\_\_\_\_ square feet.

12. The Bidder [ ] does [ ] does not employ people in Ohio or a qualifying border state.

If so, the number of people employed in Ohio and qualifying border states is: \_\_\_\_\_.

13. The Bidder is offering products manufactured in Ohio, except for the following items, which have been or will be manufactured in the following locations:

Item \_\_\_\_\_ Mfg. Location \_\_\_\_\_

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

14. The Bidder certifies that each product offered in this Bid is a domestic source end product under Revised Code Section 125.09, Administrative Code Rule 123:5-1-26, 48 USC Sections 10a-10d, and the applicable regulations in 48 CFR Chapter 25. Exceptions are as follows:

Item \_\_\_\_\_ Mfg. Location \_\_\_\_\_

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

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

Address 1:	Address 2:

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

16. The Bidder certifies that 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.

17. The Bidder certifies that 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.

17. The Bidder certifies that 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:

<b>Potential Conflicts (by person or entity affected)</b>

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

The Bidder acknowledges that 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 that the Bidder did not disclose in its Bid.

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**

**ITEM IDENTIFICATION FORM**

Bidders responding to the ITB must submit a complete Item Identification form with the Qualification Summary. **This Qualification Summary does not require submission of pricing at this time.**

**THE LOWEST TOTAL BID DURING THE REVERSE AUCTION FOR THE REQUIRED ITEMS WILL BE THE BASIS FOR DETERMINING THE CONTRACT AWARD.**

All Bids include F.O.B. destination. Bids must include all packing, transportation and insurance charges.

During the Reverse Auction a Bid must be entered for each required line item. Failure to provide a Bid for any required line item will result in the disqualification of the bidder's response. The total lowest Bid will be determined by multiplying each line item Bid by the corresponding estimated quantity and adding these together. Additionally, the Item Identification form must not include exceptions, additional terms and conditions or assumptions.

**Required Items**

<b>Item</b>	<b>Manufacturer</b>	<b>Model Number</b>	<b>Estimated Quantity</b>	<b>Reverse Auction Pricing</b>
Standard Desktop			2399	Per Desktop
Specialty Desktop			693	Per Desktop
Standard Desktop laptop			570	Per Laptop
Standard Mobile Laptop			25	Per Laptop
Carrying Case			481	Per Case
Docking Station			570	Per Docking Station
Green Delivery			3687	Per Computer

**The following optional items will not be used to determine the lowest Bidder during the Reverse Auction. These items will be available from the Contractor at the discretion of the agency if the Bidder provides costs for the items during the Reverse Auction.**

<b>Item</b>	<b>Manufacturer</b>	<b>Part Number</b>	<b>Reverse Auction Pricing</b>
Fourth (4) year warranty on desktops including Computrace license			Per Desktop
Fourth (4) year warranty on laptops including Computrace license			Per Laptop
Fifth (5) year warranty on desktops including Computrace license			Per Desktop
Fifth (5) year warranty on laptops including Computrace license			Per Laptop

**Certified disposal services for old equipment**

This service must include pickup and responsible disposal/recycling of the old equipment and a certification that all data on the equipment has been destroyed. The Bidder must describe the steps that will be taken to provide this service. Also include any information on residual value for the old equipment. This service may be subcontracted. Reverse Auction pricing is per computer.

**Warehousing of equipment to facilitate deployment schedule**

This service would include the Contractor taking delivery of the required equipment and delivering the equipment to the required locations using the ODOT deployment schedule. The deployment schedule will start July 1, 2010 and continue for approximately six months. This could be an important service due to fiscal year funding. The Bidder must describe the steps that will be taken to provide this service. Reverse Auction pricing is per computer.

**Asset tagging**

This service involves placing asset tags on the equipment and providing ODOT with an electronic copy of the required asset information. The Bidder must describe the steps that will be taken to provide this service. Reverse Auction pricing is per computer.

**Loading of ODOT standard image prior to delivery**

This service would involve loading onto each computer an ODOT provided disk image. The Bidder must describe the steps that will be taken to provide this service. Reverse Auction pricing is per computer.

**Assistance or total deployment services**

This service involves providing technical assistance to ODOT with the deployment of replacement computer hardware. The Bidder must provide here an hourly estimate for the replacement of a single computer. Reverse Auction pricing is per hour.