

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES**

INSTRUCTIONS, TERMS AND CONDITIONS FOR BIDDING

Registration with the Secretary of State. By the signature affixed to this document, the bidder attests that the Bidder is:

- (A) an Ohio corporation that is properly registered with the Ohio Secretary of State; or
- (B) a foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under Sections 1703.01 to 1703.31 of the Ohio Revised Code, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in the state of Ohio, if such corporation is required by Section 1703.01 to 1703.31 of the Revised code to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

Certification Regarding Contract Eligibility With Other Governmental Entities. By the signature affixed to this document, Bidder hereby certifies that Bidder has not, within the last seven (7) years been the subject of any government action to limit the Bidder's right to do business with the government. If the Bidder cannot so certify, the Bidder must provide a written explanation with the bid response.

Suspension and Debarments. The Department of Administrative Services will not award a contract for goods or services, funded in whole or in part with Federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties Listing System <http://www.epls.gov/>.

Elections Law. Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: www.obm.ohio.gov.

The following links provide documents that should be signed and submitted with each proposal.

- A. Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization (DMA).** The Offeror being awarded this Contract must be registered with the Ohio Business Gateway (OBA) at <http://obg.ohio.gov> to file for DMA pre-certification; if you are not already registered you must:
 - 1. Register with the Ohio Business Gateway (OBG) at <http://obg.ohio.gov>;
 - 2. Review the Terrorist Exclusion List at: http://www.homelandsecurity.ohio.gov/DMA_Terrorist/terrorist_exclusion_list.pdf;
 - 3. Complete the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form http://www.homelandsecurity.ohio.gov/DMA_Terrorist/HLS_0038_Contracts.pdf and submit this with your RFP response.

Failure to complete the certification may result in the Offeror being deemed not responsive and/or may invalidate any Contract award. If not submitted with the proposal response, the Offeror will have seven (7) calendar days, after notification, to submit the form.

- B. W-9 Form and Additional Vendor Information Form.** The Offeror must complete a Federal Form W-9 form (dated November 2005 or later) and the Vendor Information Form (OBM-3456) in their entirety. At least one (1) original of each (W-9 and OBM-3456) must be submitted. All other copies of a Proposal may contain copies of these forms. Please indicate on the outside of the binder which Proposal contains the original, blue ink signature. If a subsidiary

company is involved, Offerors must have an original W-9 and OBM-3456 for both the parent and subsidiary companies. These documents and directions can be found on the OBM Web site at <http://www.obm.ohio.gov/forms>

- C. Equal Employment Opportunity.** The Offeror will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

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

The awarded Contractor shall abide by all Terms and Conditions set forth in this Contract and in the case of contradiction between the RFP document and the state of Ohio Terms and Conditions, the state of Ohio shall supersede.

STANDARD CONTRACT TERMS AND CONDITIONS

I. CONTRACT TERM PROVISIONS:

- A. APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of a current biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

- B. OBM CERTIFICATION.** 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 of the following conditions have been met:

1. All statutory provisions under the Ohio Revised Code, including Section §126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
 - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.
 - b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.
 - c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in any way.
 - d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
 - e. **Termination for Financial Instability.** The State may terminate this Contract by written notice to the Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
 - f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract.

However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.

- g. Termination for Subcontractor Default.** The State may terminate this Contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
 - h. Termination for Failure to Retain Certification.** Pursuant to section §125.081 of the Revised Code, the State may set aside a bid for supplies or services for participation only by minority business enterprises (MBE's) as certified by the State of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Contractor to maintain certification as a MBE. If the Contractor fails to renew its certification and/or is de-certified by the State of Ohio, Equal Opportunity Coordinator, the State may immediately cancel the Contract.
 - i. Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.
 - j. Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.
- 2. Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipts of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

II. CONTRACT REMEDIES:

- A. ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.
- B. LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.
- C. DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice to being issued to the Contractor by the State.

III. PAYMENT PROVISIONS:

A. INVOICE REQUIREMENTS. The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

1. The purchase order number authorizing the delivery of products or services.
2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

B. PAYMENT DUE DATE.

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
2. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

A. CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY. Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

B. INDEMNITY. The Contractor will indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractors performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

C. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, 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.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

D. ASSIGNMENT / DELEGATION. The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

E. CONFIDENTIALITY. The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) 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 serviced by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without

the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

- F. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- G. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

Contractor Quarterly Sales Report. In addition to the reporting required in the Contract, the Contractor must also report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales, to include both state agencies and political subdivisions, under this Contract by calendar quarter (i.e. January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the Contract user for the products and/or services listed on the purchase order or other encumbering document, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the Department of Administrative Services (DAS) on a form prescribed by DAS. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close-out report within one hundred and twenty (120) days after the expiration of this Contract. The Contract expires upon the physical completion of the last outstanding task or delivery order of the Contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close-out report.

The Contractor must forward the Quarterly Sales Report to the following address:

State of Ohio
Department of Administrative Services
General Services Division, Term Contract Program
4200 Surface Road
Columbus, OH 43228-1395

If the Contractor fails to submit sales reports, falsifies reports or fails to submit sales reports in a timely manner, DAS may terminate or cancel this Contract.

Contractor Revenue Share. The Contractor must pay the Department of Administrative Services (DAS) a revenue share of the sales transacted under this contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering agencies which includes both state agencies and political subdivisions using this Contract.

The Contractor must remit any monies due as the result of the close-out report at the time the close-out report is submitted to DAS. The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Contract Number, report amount(s) and the reporting period covered.

The Contractor should make the check payable to: Treasurer State of Ohio and forward the check to the following address:

State of Ohio
Department of Administrative Services
General Services Division, Term Contract Program
4200 Surface Road
Columbus, OH 43228-1395

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off payments or employ the remedies available under Ohio law for the non-payment of the revenue share. If the Contractor fails to pay the revenue share in a timely manner, DAS may terminate or cancel this Contract.

Workers' Compensation. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The Office of Procurement Services reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy (ies) endorsed to reflect per project / per location general aggregate limits.

If not submitted with the Bidder's response, copies of the respective insurance certificates shall be filed with the Office of Procurement Services within seven (7) calendar days after notification. Failure to submit the insurance certificates within this time period may result in the bidder being deemed not responsive. Said certificates are subject to the approval of the Director, Department of Administrative Services and shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the Director, Department of Administrative Services. Failure of the Bidder to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best.

Ohio Ethics. All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict 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 Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

Executive Order 2007-01S is available for review at www.governor.ohio.gov, click on Governor's Office and then on Executive Orders.

Declaration of Material Assistance. In accordance with R.C. 2909.33(C), I certify that I meet one of the following conditions:

- (a) I have **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) I have 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) I have either precertified with the Office of Budget and Management, or have completed the Declaration of Material Assistance form as directed on page 2 of the Invitation to Bid, (Item D), certifying that I have not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

Conflict of Interest Statement. Each Proposal must include a statement indicating whether the Offeror or any people that may work on the Project through the Offeror have a possible conflict of interest with the State, and, if so, the nature of that conflict. The State has the right to reject a Proposal in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.

Reimbursable Expenses. The State will pay all reimbursable expenses identified in the RFP, if any, in accordance with the terms in the RFP and, where applicable, Section 126.31 of the Revised Code. The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable in the RFP.

In making any reimbursable expenditure, the Contractor will always comply with the more restrictive of its own, then-current internal policies for making such expenditures or with the State's then-current policies. All reimbursable travel will require the advance written approval of the State's Agency Project Representative. All reimbursable expenses will be billed monthly and paid by the State within 30 business days of receiving the Contractor's invoice.