

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

INSTRUCTIONS TO BIDDERS

Article I-1. Complete Competitive Sealed Bid with Authorized Signature. Bidders must submit a complete, signed competitive sealed bid, which at a minimum should include all of the pages of the Invitation to Bid that required the bidder to respond and any additional information or samples required by the Invitation to Bid. Bids should be signed, in ink, on the front page of the Invitation to Bid. Bidders are requested not to use black ink to sign the Bid.

Article I-2. Delivery of Bids.

I-2.1 When Bids may be Delivered. The Department of Administrative Services ("DAS") must receive bids no later than 12:00 p.m. the day the bids are scheduled for opening. DAS receives bids during the hours of 9:00 a.m. through 4:30 p.m., Monday through Friday, except state holidays. DAS does not accept bids with insufficient postage or collect on delivery.

I-2.2 Where Bids must be Delivered. Bids must be delivered to the following address:

Department of Administrative Services
General Services Division
Office of State Purchasing
ATTN.: Bid Desk
4200 Surface Rd.
Columbus, OH 43228-1395.

I-2.3 How Bids May be Delivered. Each bid must be submitted in a sealed envelope with the bid number clearly marked on the outside of the envelope. If a bidder uses an express mail or courier service, the bid number must be clearly marked on the express mail or courier envelope or must be enclosed in a sealed envelope inside the express mail or courier service envelope, with the bid number clearly marked on the inside envelope. A bid that is not properly and clearly marked and is inadvertently opened before the scheduled bid opening time, may not be evaluated for contract award.

Article I-3. Bids are a Public Record.

I-3.1 Interested bidders may attend the opening of the bids.

I-3.2 After bids are opened and certified by the Auditor of State, they are available for public review until the close of business for the day.

I-3.3 After bids are opened they are public records as defined in Ohio Revised Code 149.43 and are subject to all laws appurtenant thereto.

I-4.1 Bidder May Request Clarification. If a bidder discovers an inconsistency, error or omission in this Invitation to Bid, the bidder should request clarification from the buyer listed on the front page of the Invitation to Bid, by letter, or through internet, addressed to the State purchasing administrator. Bidders should make their requests for clarification a minimum of five (5) working days before the date of bid opening.

I-4.2 DAS Modifications through Written Addendum. When it is necessary to modify an Invitation to Bid, DAS does so by written addendum only.

I-4.3 Damages Arising from Bid Specifications. A bidder may not be compensated for damages arising from inaccurate or incomplete information in the Invitation to Bid specifications or from inaccurate assumptions based upon the specifications.

Article I-5. Evaluation of Bids

The contract will be awarded to the lowest responsive and responsible bidder as determined by DAS under the Ohio Revised Code (the "Code").

I-5.1 Lowest Bidder. A bidder is lowest if its bid offers the lowest-cost supply or service in comparison to all other bidders as set forth in the evaluation paragraph in the bid. While bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest bidder.

I-5.2 Responsive Bidder. A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

I-5.3 Responsible Bidder. DAS' determination of a bidder's responsibility includes the following factors:

- (A) the experience of the bidder,
- (B) the bidder's financial condition,
- (C) the bidder's conduct and performance on previous contracts,
- (D) the bidder's facilities,
- (E) the bidder's management skills, and
- (F) the bidder's ability to execute the contract properly.

Article I-4. Interpretation of Bid Specifications:

I-5.4 Preference for Ohio Products. The bid award may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

I-5.5 Tied Bids. If two or more bidders offer the same cost and both are determined to be responsive and responsible, DAS may break the tie with the flip of a coin. DAS may assign “heads” and “tails” to the bidders. The coin flip may be conducted in the presence of the bidders, if they elect to be present, and is the final determination of the lowest, responsive and responsible bidder.

I-5.6 Rejected Bids. DAS may reject any bid, in whole or in part, if any of the following circumstances are true:

(A) bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the Invitation to Bid,

(B) the price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the purchasing agency's available funds, or

(C) DAS determines that awarding any item is not in the best interest of the State of Ohio.

I-5.7 Unit Costs. Bidders shall not insert a unit cost of more than three (3) digits to the right of the decimal point. Digit(s) beyond three (3) will be dropped and not used in the evaluation of the Bid.

Article I-6. Withdrawal of Bids

I-6.1 Withdrawal before Bid Opening. A bidder may withdraw its bid, by written request, any time after DAS receives the bid and before bid opening.

I-6.2 Withdrawal after Bid Opening. A bidder may by written request withdraw its bid after bid opening, 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 lowest bid contains a mistake, DAS may ask the bidder for written confirmation of its bid.

Article I-7. Correction of Bids

I-7.1 Correction before Bid Opening. If a bidder withdraws its bid 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. Any corrections must be completed off the premises.

I-7.2 Correction after Bid Opening. DAS may permit a bidder alleging an inadvertent error to correct its bid, after opening, only if the mistake and the correction are clearly evident from the bid and correction does not otherwise give the bidder an unfair competitive advantage.

Article I-8. Bids are Firm for 90 Days. Unless stated otherwise, once opened all bids are irrevocable for ninety (90) days. Beyond ninety (90) days, bidder will have the option to honor their Bid or make a written request to withdraw their Bid from consideration.

Article I-9. Requests for Revisions or Additions to the Contract: Bidders are required to comply with all of the terms and conditions of the Invitation to Bid, whether the bidder had actual knowledge of the terms and conditions of the Invitation to Bid and regardless of any statement or omission in the bid that might indicate a bidder's contrary intention. DAS will not agree to any additional or inconsistent terms or conditions proposed by the bidder. The terms and conditions of the Invitation to Bid prevail over any inconsistent or additional terms or conditions of the bid proposed by the bidder.

Article I-10. Information Requested: DAS may request additional information to evaluate a bidder's responsiveness to the Invitation to Bid or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely impact DAS' evaluation of the bidder's responsiveness or responsibility.

Article I-11. Samples: DAS may require bidders, by Invitation to Bid or by request during evaluation, to provide sample supplies or equipment or examples of work, at the bidder's expense. Samples must clearly identify the bidder, the bid number, and the item the sample represents in the bid. DAS will return samples that are not destroyed by testing, at the bidder's expense, upon the bidder's timely request. DAS may keep the samples of the bidder awarded the contract until the completion of the contract. Unsolicited samples submitted in response to this Invitation to Bid will not be evaluated and DAS may dispose of them in any way it chooses.

Article I-12. Bid Preparation. The State of Ohio assumes no responsibility for costs incurred by the bidder prior to the award of any Contract resulting from this Bid. Total liability of the State is limited to the terms and conditions of a resulting Contract.

Article I-13. Protests. Any bidder, who is not in agreement with the competitive bidding process used to make the procurement may file a protest. The protest must be timely and submitted in writing. Any determination to stay the proceedings will be the sole discretion of the Director, DAS, or his designee. The decision of the Director or his designee shall be final and conclusive unless any person adversely affected by the decision commences an action in a court of law.

Article I-14. Ethics. All bidders and employees of the Office of State Purchasing are bound by the Ethics Laws of the State of Ohio. Any bidder or employee who violates any of these laws will be subject to penalties set forth by law.

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CONTRACT TERMS AND CONDITIONS

Article K-1. Contract Components; Entirety; Changes; Interpretation.

K-1.1 Contract Components. This Contract consists of the complete Invitation to Bid, including the Instructions to Bidders, the Contract Terms and Conditions, the Special Contract Terms and Conditions, the bid specifications and any written amendments to the Invitation to Bid; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").

K-1.2 Entire Agreement; Parties to the Contract. This Contract is the entire agreement between the contractor ("Contractor") and the Department of Administrative Services ("DAS") on behalf of the State agencies that may purchase from this Contract. The State agencies that may purchase from this Contract are listed on the front page of the Invitation to Bid as "Participating State Agencies."

K-1.3 Contract Changes; Waiver. Changes or modifications to this Contract must be made in writing and signed by both parties. If a party to this Contract does not demand strict performance of any term of this Contract, the party has not waived or relinquished any of its rights; the party may at any later time demand strict and complete performance of the term.

K-1.4 Headings. The headings used throughout this Contract are for convenience only; they are not to be used to interpret the terms or conditions of this Contract.

Article K-2. Contract Orders. Participating state agencies will order supplies or services under this Contract from Contractor directly. The Contractor may receive orders made by participating state agencies by telephone, facsimile, electronically, in person, debit order or by State of Ohio purchase order from authorized employees of the participating agency. The State will not be responsible for orders placed by unauthorized employees. Contractor is not required to fill an order with a delivery date that is more than 30 days beyond the date of Contract expiration, termination or cancellation, unless the Contract provides for quarterly deliveries. Under a Contract that provides for quarterly deliveries, Contractor is not required to fill an order with a delivery date that is more than 90 days beyond the date of Contract expiration, termination or cancellation.

Article K-3. Standard Invoice & Payment

K-3.1 Invoice. The Contractor shall submit an invoice to the ordering agency upon shipment of the supplies or performance of the service as described on the purchase order. Unless otherwise requested by the ordering agency, the invoice must be in quadruplicate. The invoice must be a "proper invoice" to receive consideration for payment. A

"proper invoice" is defined as being free of defects, discrepancies, errors, or other improprieties. Improper invoices will be returned to the Contractor noting the areas of discrepancy.

K-3.2 Compensation. In consideration for Contractor's performance each participating state agency will pay Contractor directly at the rate specified in the Contract. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer. For all transactions the Contractor must have a valid W-9 form on file with the Office of Budget and Management. In addition, for purchases of services, Contractor must also be registered with the Office of Budget and Management's (OBM) vendor database. Registration in OBM's database requires the Contractor to complete an IRS W-9 Form. The completed original form should be mailed to: Office of Budget and Management, Vendor Compliance Section, 30, East Broad Street, 34th Floor, Columbus, OH 43215".

K-3.3 Ohio Payment Card. Participating state agencies purchasing supplies may use the Ohio Payment Card. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

K-3.4 Payment Due Date. Each participating state agency must make payments under this Contract no later than the 30th calendar day from the day it receives an invoice, that conforms to the State's current policy, for the supplies or services it has accepted. The participating agency may only process an invoice for payment after delivery and acceptance of the ordered supplies or services has transpired.

K-3.5 Interest on Overdue Payments. Participating state agencies will determine and pay interest for overdue payments on proper invoices in accordance with Section 126.30 of the Revised Code.

K-3.6 Taxes: Participating state agencies are exempt from all federal, state and local taxes. Participating state agencies will not pay any taxes on supplies or services purchased from Contractor, unless the Special Contract terms and conditions specifically state otherwise.

Article K-4. Time of Performance.

K-4.1 Term of Contract. This Contract is effective upon the projected beginning date on the Invitation to Bid cover page or upon signature of DAS whichever is later in time. This Contract will remain in effect until the projected ending date on the Invitation to Bid cover page or until the Contract is fully performed by both parties or until it terminates in accordance with the Ohio constitutional or statutory limitations in this Article, Section 4.3, or until it is canceled or terminated in accordance with Article K-6, whichever occurs first.

K-4.2 Contract Renewal. This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be by agreement any number of times for any period of time. The cumulative time of all renewals may not exceed two years.

K-4.3 Constitutional and Statutory Limitations:

(A) Appropriation may not be longer than two years. State contracts may not extend beyond a biennium. If the term of this Contract extends beyond a biennium, the Contract will terminate on the last day of the current biennium. At that time, DAS may renew this Contract by letter to Contractor no later than July 1, of the new biennium. The operating biennium expires June 30th of each odd-numbered calendar year.

(B) 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.

(C) Certification of Funds. Under Revised Code Section 126.07, this Contract is not valid unless and until the Director of the Ohio Office of Budget and Management certifies that there is a balance in the appropriation not already obligated to pay existing commitments.

Article K-5. Delivery.

K-5.1 F.O.B. The Place of Destination. Contractor must provide supplies or services under this Contract F.O.B. the place of destination freight prepaid. The place of delivery will be specified by the participating state agency on the agency's purchase order or other ordering document.

K-5.2 Time of Delivery. If Contractor is not able to deliver the supplies or services on the date and time specified by the participating state agency on the agency's ordering document, Contractor must coordinate an acceptable date and time for delivery with the agency. If Contractor is not able to or does not provide the supplies or services to a participating state agency by the date and

time provided on the agency's ordering document or by the date and time later agreed upon, the State may obtain any remedy under Article K-6 of this Contract or any other remedy at law.

K-5.3 Minimum Orders-Transportation Charges. For purchase placed that are less than the stated minimum order, transportation charges will be prepaid and added to the invoice by the Contractor to the delivery location designated by the ordering agency. Shipment is to be made by private or commercial freight service provider, air, rail, water, parcel post, express or commercial package delivery, whichever is the most economical and expeditious method for proper delivery of the item. Failure of the Contractor to utilize the most economical mode of transportation shall result in the Contractor reimbursing the ordering agency the difference between the most economical mode of transportation and the mode of transportation used by the Contractor. Failure to reimburse the ordering agency shall be considered as a default.

Article K-6. Contract Cancellation; Termination; Remedies.

K-6.1 Contract Cancellation. If Contractor fails to perform any one of its obligations under this Contract, it will be in default and DAS may cancel this Contract in accordance with this section. The cancellation will be effective on the date delineated by DAS.

(A) Contract Performance Substantially Endangered. If Contractor's default is so substantial that it may not be able to be cured within a reasonable time or if DAS determines that the performance of the Contract is substantially endangered through no fault of the State, DAS may cancel this contract by written notice to Contractor.

(B) Cancellation for Unremedied Default. If Contractor's default may be cured within a reasonable time, DAS will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure its default within the time required, DAS may cancel the contract by written notice to Contractor. If DAS does not give timely notice of a default to Contractor, DAS has not waived any of the State's rights or remedies concerning the default.

(C) Cancellation for Persistent Default. DAS may cancel this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After DAS has notified Contractor of its third default, DAS may cancel 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 in any way.

(D) Cancellation for Financial Instability. DAS may cancel this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.

(E) Cancellation for Delinquency; Violation of Law. DAS may cancel 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. However, DAS may not cancel this Contract if Contractor has entered into a repayment agreement with which Contractor is current. DAS also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract.

K-6.2 Contract Termination. DAS may terminate this Contract for convenience with 30 days written notice to Contractor.

K-6.3 Remedies for Default.

(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, or \$100.00 per day, whichever is less, for every day the default is not cured by Contractor.

(C) Deduction of Damages from Contract Price. The participating state agency 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, with DAS prior written notice to Contractor.

Article K-7. Force Majeure. If the State or Contractor is unable to perform any part its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; arrests; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

Article K-8. Delegation of Duty and Assignment of Rights.

K-8.1 DAS Consent to Delegate. Contractor may not delegate any of its duties under this Contract unless DAS consents to the delegation in writing. DAS' consent to the delegation is not DAS' agreement to release Contractor from its duties under this Contract

K-8.2 DAS Consent to Assign. Contractor may not assign any of its rights under this Contract unless DAS consents to the assignment in writing. Any purported assignment made without DAS' written consent is void. DAS may assert against an assignee any claim or defense DAS may have against the assignor.

K-8.3 Antitrust Assignment to DAS. Contractor assigns to DAS all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.

Article K-9. Requirements Contract. The quantity of supplies or services to be provided under this Contract is the quantity determined by the actual, good faith, requirements of the participating state agencies. DAS may allow a participating state agency to purchase supplies or services identical to those provided under this Contract from a supplier other than Contractor, if one of the following conditions apply:

K-9.1. Large quantities. The supplies or services to be purchased were not anticipated by DAS at the time this Contract was let and the supplies or services are required in a large quantity.

K-9.2 Unique or Unusual Nature. The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract.

K-9.3 Emergency Purchase. The agency requires the supplies or services to remedy an emergency and Contractor is not able to provide the supplies or services, as the emergency requires.

Article K-10. Subcontracting. Contractor must identify its subcontractors, suppliers and joint ventures for the performance of this Contract. Contractor must supplement its list of subcontractors, suppliers or joint ventures, if Contractor's subcontractors, suppliers or joint ventures change during the term of this contract. The Contractor shall not use any subcontractor who has, within the last seven (7) years been the subject of any government action to limit the subcontractor's right to compete for or to do business with the acting government. If the subcontractor has been subject to a government action to limit the subcontractor's right to do business with that government within the last seven (7) years, please

provide a written explanation to DAS. Further, the subcontractor agrees to be bound to all of the Terms and Conditions and specifications of the Contract.

Article K-11. Price Adjustments.

K-11.1 Price Increases. If the Special Contract Terms and Conditions provide for a price increase, Contractor may request a price increase in accordance with the Special Contract Terms and Conditions.

K-11.2 Price Decreases. If DAS becomes aware of a general price decrease for the supplies or services provided under Contract, Contractor must provide a price decrease to the State of Ohio. Failure to provide a decrease will be considered as a default.

Article K-12. Equal Employment Opportunity.

Contractor must comply with all federal and state laws pertaining to equal employment opportunity, including federal and state executive orders. Contractor will not by reason of race, color, religion, sex, sexual orientation, Vietnam veteran status, age, handicap, national origin, or ancestry, discriminate against any person in the hiring of employees for the performance of work under this Contract. Contractor, Contractor's subcontractors and any other agent acting on behalf of Contractor may not discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Contract on account of race, color, religion, sex, sexual orientation, Vietnam veteran status, age, handicap, national origin, or ancestry. During the performance of the Contract, Contractor agrees to comply with Revised Code Section 125.11.1(B), Administrative Code Sections 123:1-49-01 through 123:1-49-06 and Executive Order 2001-12T. The Contractor understands the State Equal Opportunity Division may conduct pre-award and post-award compliance reviews to determine if the Contractor maintains nondiscriminatory employment practices, maintains an affirmative action program and is exerting good faith efforts to accomplish the goals of the affirmative action program.

Article K-13. Drug-Free Workplace. Contractor must comply with all applicable state and federal laws regarding a drug free workplace. Contractor must exert good faith efforts to ensure that its employees do not purchase, transfer, and use or possess illegal drugs or alcohol or abuse prescription drugs, in any way, while working on State property.

Article K-14. Survivorship. In addition to Article K-6 Section 6.3, Remedies for Default, of this Contract, the following Articles, Article K-15 through Article K-20, survive the expiration of this Contract.

Article K-15. Indemnification. Contractor will indemnify the State of Ohio, including its public officials and employees, for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities that may arise out of or are related to Contractor's, including Contractor's employees and agents, performance under this Contract.

Article K-16. Confidentiality. Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. Contractor may not disclose any information obtained by it as a result of the Contract, without written permission from DAS. Contractor must assume that all state information, documents, data, records or other material is confidential.

Article K-17. Publicity. Contractor and its subcontractors may not use or refer to this Contract to promote or solicit Contractor's or subcontractor's supplies or services. Contractor and its subcontractors may not disseminate information regarding this Contract, unless agreed to in writing by DAS.

Article K-18. Governing Law; Severability. The laws of the State of Ohio govern this Contract, and venue for any dispute will be exclusively with the appropriate court of competent jurisdiction in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Contract will remain in full force and effect to the extent that the remaining provisions continue to make sense.

Article K-19. Construction. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

Article K-20. Political Subdivisions. This Contract may be relied on by Ohio political subdivisions, including Ohio counties, cities and villages ("Political Subdivisions"). If Political Subdivision relies on this Contract to issue a purchase order or other ordering document, Political Subdivision steps into the shoes of the State under this Contract. Political subdivision's order and this Contract are between Contractor and political subdivision. Contractor must look solely to political subdivision for performance, including payment. Contractor holds the State of Ohio harmless with regard to political subdivision's orders and political subdivision's performance. DAS may cancel this Contract and may seek remedies if Contractor fails to honor its obligations under an order from a political subdivision.

Article K-21. Worker's Compensation. The bidder shall be required to provide proof that the bidder's firm and his agents shall be covered by Worker's Compensation Liability Insurance as required by Ohio law, or if work is done outside of Ohio, the laws of the appropriate state(s) where work on the Contract will be done. The bidder shall also be required to show proof of Employer's Liability (Stop Gap) coverage with at least a \$1,000,000 limit. The bidder may list the appropriate certificate number and provider information on the responsive page of the Invitation to Bid or may include copies of the appropriate

Purchasing. Failure to provide the certificate within the stated time period will result in the bidder being deemed not responsive. Failure to maintain Worker's Compensation Liability Insurance and Employer's Liability coverage will be considered as a default.

Article K-22. Automobile and General Liability. During the term of the Contract and any renewal thereto, the bidder, and any agent working on state property on behalf of the bidder, at its sole cost and expense shall maintain a policy of automobile liability and commercial general liability insurance.

Article K-22.1 Commercial General Liability. insurance coverage for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside of 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.

Policy Limits:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Per Occurrence Limit	\$1,000,000
Personal & Advertising Limit	\$1,000,000
Fire Legal Liability	\$ 100,000
Medical Payments	\$ 10,000

The certificate shall be endorsed to reflect a per project/per location General Aggregate limit. If the bidder uses an umbrella/excess policy to meet the required limits, it is understood that the policy shall follow form on a per project/per location basis.

It is agreed upon that the bidder's commercial general liability insurance shall be primary over any other coverage.

Automobile insurance coverage with a combined single limit of \$1,000,000. The certificate shall be endorsed to designate the State of Ohio as an Additional Insured, as its interest may appear. It is agreed that the bidder's automobile liability insurance shall be primary over any other coverage.

If not submitted with the bidder's response, copies of the insurance certificate shall be filed with the Office of State Purchasing within seven (7) calendar days after notification. Failure to submit the insurance certificate within this time period will result in the bidder being deemed not responsive. Said certificate(s) are subject to the approval of the Director, Department of Administrative Services, and shall contain a clause or endorsement providing sixty (60) 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 shall be considered as a default.

Article K-23. Contract Compliance. The participating state agency will be responsible for the administration of

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Article K-27. Usage Reports. At no cost to the State, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested

the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify DAS through a Complaint to Vendor (CTV) to help resolve the infraction(s). DAS will apply the provisions of Article K-6, "Contract Terms and Conditions" to resolve the infractions(s).

Article K-24. Quality Assurance. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the provisions of Article K-6, "Contract Terms and Conditions".

Article K-25. ELECTRONIC COMMERCE PROGRAM.

The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the contractor by reducing time delays in receiving orders and payments that are associated with the existing manual processes. It is the goal of the State of Ohio to eventually conduct all procurement activities through electronic commerce technologies. Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio in the future. The following information is offered to assist all interested businesses in their efforts to move toward becoming a trading partner with the State of Ohio through the electronic commerce technologies. Electronic Data Interchange (EDI) is used for electronic purchase orders, invoicing, and payment of purchases. The program includes sending electronic purchase orders to the Contractor, the receipt of electronic invoices from the Contractor and the transmission of payment and remittance information back to the Contractor. A complete "Implementation Guide", for doing business with the State of Ohio using EDI, can be found on the Internet at: www.state.oh.us/ecedi/. This guide contains all of the information necessary for a company to become EDI compliant. By following all of the links, the entire guide may be viewed, downloaded and printed at your location. In addition, companies who are interested in becoming EDI trading partners with the State of Ohio should visit the Office of Budget and Management's website at www.state.oh.us/obm/BusinessCommunityPage/eCommerce.asp for additional information regarding E Commerce.

Article K-26. Warranties. Unless otherwise stated, all supplies shall be new and unused and when authorized, recycled or refurbished products. All products shall carry manufacturer warranties. The Contractor warrants all supplies to be free from defects in labor, material and manufacturer and to be in compliance with the Contract specifications.

by the Office of State Purchasing. The reports will include information as to purchase activity under the Contract by all participating agencies and Co-Operative Purchasing

Program members. Report topics will include, but will not be limited to: customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information as requested by the Office of State Purchasing. Electronic media is the preferred method for these reports. Failure to provide the requested reports will be deemed as an event of default.

Article K-28. Return Goods Policy. The State will apply the following Return Goods Policy on all purchases made under the Contract. The bidder acknowledges to have read, understood, and agrees to this Policy.

A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.

B) For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

C) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and

acceptance exceed six (6) months will be at the option of the Contractor.

Article K-29. Product Recall. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify DAS-State Purchasing and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

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