July 24, 2012

Re: RFP #0A1098 – Electronic Construction Bidding RFP

On July 2, 2012, the Department of Administrative Services posted the above mentioned RFP opportunity.

During the inquiry period, it was decided that the bid should be cancelled and rebid with new scoring requirements. The bid will be cancelled immediately and re-posted later as RFP #0A1102 on the Procurement Website.

The state offers an apology for any inconvenience created by this cancellation and your continued interest in doing business with the state is appreciated.

If you have questions concerning the upcoming posting, please call Cyrus Carter at 614-728-0906.

REQUEST FOR PROPOSALS

RFP NUMBER: 0A1098
DATE ISSUED: July 2, 2012

The State of Ohio, for the Department of Administrative Services (DAS) is requesting proposals for:

Electronic Construction Bidding Service Provider

INQUIRY PERIOD BEGINS:	**July 2, 2012**
INQUIRY PERIOD ENDS:	**July 20, 2012**
OPENING DATE:	**July 30, 2012**
OPENING TIME:	**1:00 P.M.**
OPENING LOCATION:	**Department of Administrative Services General Services Division IT Procurement Services Bid Desk 4200 Surface Road Columbus, Ohio 43228-1313**

This RFP consists of five parts and eleven attachments, totaling 71 consecutively numbered pages. Two supplements are also attached to this RFP. Please verify that you have a complete copy.

In lieu of taking exceptions to RFP requirements, including but not limited to terms and conditions, scope of work requirements, etc., or providing assumptions that may be unacceptable to the State, offerors are strongly encouraged to use the inquiry process in Part Three of the RFP.

PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Competitive Sealed Proposals ("RFP") under Section 125.071 of the Ohio Revised Code (the "Revised Code") and Section 123:5-1-8 of the Ohio Administrative Code (the "Administrative Code"). The Ohio Department of Administrative Services will solicit competitive sealed proposals ("Proposals") for a web-based, electronic construction bidding service for the State of Ohio. As a result of the implementation of a Contractor-hosted solution, a construction contract bidding capability (the "Work") will be integrated with the State of Ohio's existing Ohio Administrative Knowledge System Capital Improvements ("OAKS-CI") module.

If a suitable offer is made in response to this RFP, the State of Ohio (the "State"), through the Department of Administrative Services, may enter into a contract (the "Contract") to have the selected offeror (the "Contractor") perform all or part of the Work. This RFP provides details on what is required to submit a Proposal for the Work, how the State will evaluate the Proposals, and what will be required of the Contractor in performing the Work.

This RFP also gives the estimated dates for the various events in the submission process, selection process, and performance of the Work. While these dates are subject to change, prospective offerors 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 Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2013, whichever is sooner. The State may renew this Contract for up to five (5) additional one-year term(s), subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor and the needs of the Ohio Department of Administrative Services.

The State may reject any Proposal if the offeror fails to meet a deadline in the submission or evaluation phases of the selection process or objects to the dates for performance of the Work or the terms and conditions in this RFP.

Background. The Ohio School Facilities Commission ("OSFC") and the State Architect's Office ("SAO") desire to automate the construction bidding process by utilizing a web-based, electronic construction bidding service.

Established in 1997, the OSFC is responsible for administration of the state's school construction and renovation program. The Commission is currently working with, or has completed all necessary work in, over half of the state's 613 school districts. As of January 1, 2012, the Commission had opened 919 new or renovated buildings and had completely addressed the facilities needs of 214 districts across the state.

SAO oversees capital facilities projects through managing design and construction contracts. The office manages projects for state agencies, boards, commissions and institutions of higher education. During a typical year, the office manages more than 200 public construction projects.

Note: Pursuant to Am. Sub. HB 487, the SAO and the OSFC will merge into and under the Ohio Facilities Construction Commission (OFCC). Such merger shall not change the Contractor's obligations to perform this Contract under the same terms, conditions, and price.

Note: Additional information on the Ohio State Architect's Office can be found at: http://www.das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/tabid/305/Default.aspx. Additional information of the Ohio School Facilities Commission can be found at: http://osfc.ohio.gov/.

OAKS Capital Improvements ("OAKS CI") is a cradle-to-grave construction management system for State sponsored capital improvement projects.

The functional scope of “OAKS CI” includes:

- Collaborative management involving all of the project team
- Integration from conceptual planning and design, through procurement, project execution and closeout
- Document approval and tracking through workflow based on State Architect’s Office (SAO) processes
- Budget control and cost tracking
- Dynamic change management functionality that feeds budget management
- Shared document repository reducing printing, handling and mailing
- Powerful reporting and information query tools

OAKS CI is a web-based system, which makes data readily available and ensures project communication and collaboration. It is currently deployed on over 400 projects involving more than1800 users.

Today, contractor bidding is done manually using sealed bids and paper bid tabulation by both OSFC and SAO. The State would like to adopt an electronic construction bidding service for some of the projects sponsored by both OSFC and SAO. Where OAKS CI is deployed on these projects, the State would like to integrate the design and contracting functionality in OAKS CI with the electronic construction bidding service.

Objectives. The State has the following objectives that it wants the Work to fulfill, and it will be the Contractor’s obligation to ensure that the Work meets these objectives:

1. Implementation of a Contractor-hosted, centralized web-based data system for electronic bidding of construction contracts sponsored by state agencies, local school districts and institutions of higher learning.
2. Allow the State to develop templates, procedures, and best practices for use by architects preparing to request and process bids using the Contractor’s system.

Total User Base. User Base will include State staff from various agencies and institutions responsible for administering bidding events, architects and engineers responsible for preparation of bid forms and bidding documentation, and third party bidders interested in bidding on one or more contracts. The number of users varies and is dependent on the amount of funding the legislature commits to capital improvement projects, the contracting methods adopted, and the number of construction firms interested in bidding for the work.

Overview of the Scope of Work. The scope of work for the Work is provided in Attachment Two: Part One of this RFP. This section only gives a summary of the Work. If there is any inconsistency between this summary and the attachment's description of the Work, the attachment will govern.

The Electronic Construction Bidding Services RFP is being issued on behalf of SAO/OSFC to select a qualified offeror who can provide a contractor-hosted solution to administer bidding activities for State sponsored construction and capital improvements. The State requires that offerors describe their proposed solution, ability, experience, and proven effectiveness in providing a solution and related services to meet the State’s requirements documented in this RFP and supplements. Offeror Proposals will be evaluated to assess the availability of the required services and the relative capabilities of the offerors and their proposed solutions.

The offeror must provide a contractor-hosted solution where the proposed services and required functionality are delivered in such a manner that the State has no responsibility for the administration of the database environment, the software environment, the technical infrastructure and associated processes and procedures. The database and solution functionality proposed must be accessible through the web by internal, external and public users and must be secure.

The Contractor must provide the following products and services to the State through the life of the Contract:

- Web-based, Secure Construction Bidding Service
    - Hosted by the Contractor
    - Available 5 AM to 11:59 PM daily, 7 days per week
    - Meeting Stated Service Level Agreements (SLA)
- Implementation Support
    - Access to knowledgeable resources to assist State workers implementing the Work
- Bidder Training
- Bidder Helpdesk Support
- Bidder Administration
- Optional System Enhancements

Hosting Services. The Contractor must offer this service in such a manner that the State of Ohio has noresponsibility for the database or the technical infrastructure and associated processes and procedures. The database must be accessible through the Web and must be secure. The Contractor must prevent unauthorized access to the Electronic Construction Bidding Service Provider System. The Contractor must apply recognized industry standards to address system vulnerability to theft, mischief and efforts at tampering consistent with ITS-SEC-02, the system must be built to or meet the Moderate baseline of the NIST 800-53 special publication. Such security measures must be in compliance with the State's security policy and procedures published at http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITPolicies.aspx which refers to document Compliance with NIST Standards and Guidelines found at http://csrc.nist.gov/publications/nistpubs/800-53-Rev3/sp800-53-rev3-final_updated-errata_05-01-2010.pdf

The hosting services description must document that the Electronic Construction Bidding Service Provider System the offeror will provide is accessible through a web-enabled personal computer by accessing the offeror's computer system(s) via the Internet.

The hosted solution must support diverse protocols based upon open standards, not unduly tied to specific service components or objects, and is able to add value without unduly impacting existing deployments in agencies.

Mandatory Requirement Overview. The offeror must show evidence of meeting the following mandatory requirements for this RFP:

- The offeror's must demonstrate that their proposed Electronic Construction Bidding service is currently used by at least one federal, state, or local government entity that has conducted a minimum of 100 construction bidding events with a total value of $100 million over the past two years.

Calendar of Events. The schedule for the RFP process and the Work is given below. The State may change this schedule at any time. If the State changes the schedule before the Proposal due date, it will do so through an announcement on the State Procurement Website's question and answer area for this RFP. The Website announcement will be followed by an amendment to this RFP, also available through the State's Procurement Website. After the Proposal due date and before the award of the Contract, the State will make schedule changes through the RFP amendment process. Additionally, the State will make changes in the Work schedule after the Contract award through the change order provisions in the General Terms and Conditions Attachment to this RFP. It is each prospective offeror's responsibility to check the Website question and answer area for this RFP for current information regarding this RFP and its Calendar of Events through award of the Contract.

Dates:

Firm Dates

RFP Issued:	July 2, 2012
Inquiry Period Begins:	July 2, 2012
Inquiry Period Ends:	July 20, 2012 at 8:00 a.m.
Proposal Due Date:	July 30, 2012 at 1:00 p.m.

Estimated Dates

Award Date:	August 2012

Estimated Work Dates

Work Begins:	August 2012
System Live for Internal Users:	August 2012
System Live for Public	October 2012

There are references in this RFP to the Proposal due date. Unless it is clearly provided to the contrary in this RFP, any such reference means the date and time (Columbus, Ohio local time) that the Proposals are due and not just the date.

PART TWO: STRUCTURE OF THIS RFP

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

Parts:

Part 1	Executive Summary
Part 2	Structure of this RFP
Part 3	General Instructions
Part 4	Evaluation of Proposals
Part 5	Award of the Contract

Attachments:

Attachment One	Evaluation Criteria
Attachment Two	Work Requirements, Interval Deliverable Agreement and Special Provisions
Attachment Three	Requirements for Proposals
Attachment Four	General Terms and Conditions
Attachment Five	Sample Contract
Attachment Six	Sample Deliverable Submittal and Acceptance (Deliverable Sign-Off Form)
Attachment Seven	Offeror Certification Form
Attachment Eight	Offeror Profile Summary Form
Attachment Nine	Standard Affirmation and Disclosure Form
Attachment Ten	Cost Summary
Attachment Eleven	Special Terms and Conditions

Supplements:

Supplement One	State of Ohio Electronic Construction Bidding Requirements
Supplement Two	W-9 Form

PART THREE: GENERAL INSTRUCTIONS

The following sections provide details on how to get more information about this RFP 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 RFP process:

Procurement Representative:

Cyrus Carter
Acquisition Analyst
Ohio Department of Administrative Services
I.T. Procurement Services
4200 Surface Road
Columbus, Ohio 43228-1313

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

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

- Access the State's Procurement Website at http://procure.ohio.gov/;
- From the Navigation Bar on the left, select "Find It Fast";
- Select "Doc/Bid/Schedule #" as the Type;
- Enter the RFP number found on the first page of this RFP (the RFP number begins with zero followed by the letter "A");
- 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:
    - First and last name of the prospective offeror's representative who is responsible for the inquiry,
    - Name of the prospective offeror,
    - Representative's business phone number, and
    - Representative's email address;
- Type the inquiry in the space provided including:
    - A reference to the relevant part of this RFP,
    - The heading for the provision under question, and
    - The page number of the RFP where the provision can be found; and
- Click the "Submit" button.

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

Offerors 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. However, the State will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

The State does not consider questions asked during the inquiry period through the inquiry process as exceptions to the terms and conditions of this RFP.

Pre-Proposal Conference. No Pre-Proposal Conference will be held for this RFP.

Amendments to the RFP. If the State revises this RFP before the Proposals are due, it will announce any amendments on the State Procurement Website.

Offerors may view amendments by using the “Find It Fast” function of the State’s Procurement Webpage (described in the Inquiries Section above) and then clicking on the amendment number to display the amendment.

When an amendment to this RFP is necessary, the State may extend the Proposal due date through an announcement on the State Procurement Website. The State may issue amendment announcements any time before 5:00 p.m. on the day before Proposals are due, and it is each prospective offeror’s responsibility to check for announcements and other current information regarding this RFP.

After the Proposal due date, the State will distribute amendments only to those offerors whose Proposals are under active consideration. When the State amends the RFP after the due date for Proposals, the State will permit offerors to withdraw their Proposals within five business days after the amendment is issued. This withdrawal option will allow any offeror to remove its Proposal from active consideration should the offeror feel that the amendment changes the nature of the transaction so much that the offeror’s Proposal is no longer in its interest. Alternatively, the State may allow offerors that have Proposals under active consideration to modify their Proposals in response to the amendment.

If the State allows offerors to modify their Proposals in response to an amendment, the State may limit the nature and scope of the modifications. Unless otherwise provided in the State’s notice, offerors must make any modifications or withdrawals in writing and submit them to the State within five business days after the amendment is issued at the address and in the same manner required for the submission of the original Proposals. If this RFP provides for a negotiation phase, this submission procedure will not apply to changes negotiated during that phase. The State may reject any modification that is broader in scope than the State has authorized in the announcement of the amendment and treat it as a withdrawal of the offeror's Proposal.

Proposal Submittal. Each offeror must submit a technical section and a cost section as part of its total Proposal before the opening time on the Proposal due date. The offeror must submit the technical section as a separate package from the cost section of its Proposal, and each section must be submitted in its own separate, opaque package. The package with the technical section of the Proposal must be sealed and contain one (1) originally signed technical section and five (5) additional copies of the technical section, and the package with the cost section also must be sealed and contain two (2) complete copies of the cost section of the Proposal. Further, the offeror must mark the outside of each package with either “Electronic Construction Bidding Service Provider RFP – Technical Proposal” or “Electronic Construction Bidding Service Provider RFP – Cost Summary,” as appropriate.

Included in each sealed package, the offeror also must provide a searchable electronic copy of everything contained within the package on CD-ROM in Microsoft Office, Microsoft Project, and Adobe Acrobat format, as appropriate. If there is a discrepancy between the hard copy and the electronic copy of the Proposal, the hard copy will control, and the State will base its evaluation of the offeror’s Proposal on the hard copy.

Proposals are due no later than 1:00 p.m. on the Proposal due date. Proposals submitted by email, fax or other electronic means are **not** acceptable, and the State may reject them. Offerors must submit their Proposals to:

DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
IT PROCUREMENT SERVICES
BID DESK
4200 SURFACE ROAD
COLUMBUS, OHIO 43228-1313

BID ROOM MAIN PHONE NUMBER: 614-466-5090

The State may reject any Proposals or unsolicited modifications that it receives after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors also must allow for potential delays due to increased security. The Bid Room accepts packages between the hours of 7:30 A.M. to 5:00 P.M. Monday through Friday, excluding State Holidays. No deliveries will be accepted before or after these hours without prior arrangements. Offerors must allow sufficient time since the State may reject late Proposals regardless of the cause for the delay.

Each offeror must carefully review the requirements of this RFP and the contents of its Proposal. Once opened, Proposals cannot be altered or withdrawn, except as allowed by this RFP.

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

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 Proposal, the offeror warrants that it is not subject to an unresolved Finding under Section 9.24 at the time of its submission. The offeror also warrants that it will notify the Department of Administrative Services in writing immediately upon becoming subject to such an unresolved Finding after submitting its Proposal and before the award of a Contract under this RFP. Should the State select the offeror's Proposal for award of a Contract, this warranty of immediate written notice will apply during the term of the Contract, including any renewals or extensions. Further, the State may treat any unresolved Finding against the Contractor that prevents a renewal of the Contract as a breach, in accordance with the provisions of Attachment Four, General Terms and Conditions.

The State may reject any Proposal if the offeror takes exception to the terms and conditions of this RFP, includes unacceptable assumptions or conditions in its Proposal, fails to comply with the procedure for participating in the RFP process, or fails to meet any requirement of this RFP. The State also may reject any Proposal that it believes is not in its interest to accept and may decide not to award a contract to any or all of the offerors responding to this RFP.

Offerors may not prepare or modify their Proposals on State premises.

All Proposals and other material that offerors submit will become the property of the State and may be returned only at the State's option. Offerors should not include any confidential information in a Proposal or other material submitted as part of the evaluation process. All Proposals will be open to the public after the State has awarded the Contract.

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

Waiver of Defects. The State may waive any defects in any Proposal or in the submission process followed by an offeror, but the State will only do so if it believes that it is in the State's interest and will not cause any material unfairness to other offerors.

Multiple or Alternate Proposals. The State will not accept multiple Proposals from a single offeror or any alternative solutions or options to the requirements of this RFP. Additionally, any offeror that disregards a requirement in this RFP simply by proposing an alternative to it will have submitted a defective Proposal that the State may reject. Further, any offeror that submits multiple Proposals may have all its Proposals rejected.

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

Proposal Instructions. Each Proposal must be organized in an indexed binder ordered in the same manner as the response items are ordered in the applicable attachments to this RFP. The requirements for a Proposal's contents and formatting are contained in the attachments to this RFP. The State wants clear and concise Proposals, but offerors must answer questions completely and meet all the RFP's requirements.

The State is not liable for any costs an offeror incurs in responding to this RFP or from participating in the evaluation process, regardless of whether the State awards the Contract through this process, decides not to go forward with the Work, cancels this RFP for any reason, or contracts for the Work through some other process or through another RFP.

Location of Data. Unless the State agrees otherwise in writing, the selected offeror and its subcontractors must do the Work and keep all State data at the location(s) disclosed in the offeror's Proposal. If Attachment Two contains any restrictions on where the Work may be done or where any State data may be kept, the State may reject any Proposal that proposes to do any Work or make State data available outside of those geographic restrictions.

PART FOUR: EVALUATION OF PROPOSALS

Disclosure of Proposal Contents. The State will seek to open the Proposals in a manner that avoids disclosing their contents. The State also will seek to keep the contents of all Proposals confidential until the Contract is awarded, but the State will prepare a registry of Proposals that contains the name of each offeror. The public may inspect that registry after the State opens the Proposals.

Rejection of Proposals. The State may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, objects to the terms or conditions of this RFP, or that the State determines is excessive in price or otherwise not in the State's interest to accept. In addition, the State may cancel this RFP, reject all the Proposals, and seek to do the Work through a new RFP or other means.

Evaluation of Proposals Generally. The evaluation process may consist of up to six distinct phases:

1. Initial review;
2. Technical evaluation;
3. Evaluation of costs;
4. Requests for more information;
5. Determination of responsibility; and
6. Contract Negotiations.

The State may decide whether phases four and six are necessary, and the State may rearrange the order in which it proceeds with the phases. The State also may add or remove sub-phases to any phase at any time, if the State believes doing so will improve the evaluation process.

Clarifications and Corrections. During the evaluation process, in the State's sole discretion, it may request clarifications from any offeror under active consideration and may give any offeror the opportunity to correct defects in its Proposal, if the State believes doing so would not result in an unfair advantage for the offeror, and it is in the State's interest. The State may reject any clarification that is non-responsive or broader in scope than what the State requested. If the State does so, or if the offeror fails to respond to the request for clarification, the State then may request a corrected clarification, consider the offeror's Proposal without the clarification, or disqualify the offeror's Proposal.

Corrections and clarifications must be completed off State premises.

Initial Review. The Procurement Representative will review all Proposals for their format and completeness. The State normally rejects incomplete or incorrectly formatted Proposals, though the State may waive any defects or allow an offeror to submit a correction, if the State believes doing so would not result in an unfair advantage for the offeror and it is in the State's interest. Further, if the Auditor of State does not certify a Proposal due to lateness, the State will not open it. After the initial review, the State will forward all timely, complete, and properly formatted Proposals to an evaluation team, which the Procurement Representative will lead.

Technical Evaluation. The State will evaluate each Proposal that it has determined is timely, complete, and properly formatted. The evaluation will be scored according to the requirements identified in this RFP, including the requirements in Attachment One. Other attachments to this RFP may further refine these requirements, and the State has a right to break these requirements into components and weight any components of a requirement according to their perceived importance.

The State also may have the Proposals or portions of them reviewed and evaluated by independent third parties or various State personnel with experience that relates to the Work or to a criterion in the evaluation process. Additionally, the State may seek reviews from end users of the Work or the advice or evaluations of various State personnel that have subject matter expertise or an interest in the Work. The State may adopt or reject any recommendations it receives from such reviews and evaluations or give them such weight as the State believes is appropriate.

During the technical evaluation, the State will calculate a point total for each Proposal that it evaluates. At the sole discretion of the State, it may reject any Proposal receiving a significant number of zeros for sections in the technical portions of the evaluation. The State may select those offerors submitting the highest rated Proposals for the next phase. The number of Proposals that advance to the next phase will be within the State's discretion, but regardless of the number of Proposals selected, they always will be the highest rated Proposals from this phase.

At any time during this phase, in the State's sole discretion, it may ask an offeror to correct, revise, or clarify any portions of its Proposal.

The State will document all major decisions and make these a part of the Contract file, along with the evaluation results for each Proposal considered.

Requirements. Attachment One – Evaluation Criteria provides requirements the State will use to evaluate the Proposals, including any mandatory requirements. If the offeror's Proposal meets all the mandatory requirements, the offeror's Proposal may be included in the next phase of the evaluation, which will consider other requirements described in a table in Attachment One.

This RFP asks for responses and submissions from offerors, most of which represent components of the requirements in Attachment One. While each requirement represents only a part of the total basis for a decision to award the Contract to an offeror, a failure by an offeror to make a required submission or meet a mandatory requirement normally will result in a rejection of that offeror's Proposal. The value assigned above to each requirement is only a value used to determine which Proposal is the most advantageous to the State in relation to the other Proposals that the State received. It is not a basis for determining the importance of meeting that requirement.

If the State does not receive any Proposal that meets all the mandatory requirements, the State may cancel this RFP. Alternatively, if the State believes it is in its interest, the State may continue to consider the highest-ranking Proposals despite their failure to meet all the mandatory requirements. In doing this, the State may consider one or more of the highest-ranking Proposals. The State may not consider any lower-ranking Proposals unless all Proposals ranked above it are also considered, except as provided below.

In any case where no Proposal meets all the mandatory requirements, it may be that an upper ranking Proposal contains a failure to meet a mandatory requirement that the State believes is critical to the success of the RFP's objectives. When this is so, the State may reject that Proposal and consider lower ranking Proposals. Before doing so, the State may notify the offeror of the situation and allow the offeror an opportunity to cure its failure to meet that mandatory requirement.

If the offeror cures its failure to meet a mandatory requirement that the State has deemed critical to the success of the RFP's objectives, the State may continue to consider the offeror's Proposal. However, if the offeror is unwilling or unable to cure the failure, its Proposal may be rejected. The State then may continue to consider the other remaining Proposals, including, if the State so chooses, Proposals that ranked lower than the rejected Proposal.

Cost Evaluation. Once the technical merits of the Proposals are considered, the State may consider the costs of one or more of the highest-ranking Proposals. But it is within the State's discretion to wait until after any interviews, presentations, and demonstrations to evaluate costs. Also, before evaluating the technical merits of the Proposals, the State may do an initial review of costs to determine if any Proposals should be rejected because of excessive cost. Further, the State may reconsider the excessiveness of any Proposal's cost at any time in the evaluation process.

The State may select one or more of the Proposals for further consideration in the next phase of the evaluation process based on the price performance formula contained in Attachment One. The Proposal(s) selected for consideration in the next phase always will be the highest-ranking Proposal(s) based on this analysis. That is, the State may not move a lower-ranking Proposal to the next phase unless all Proposals that rank above it also are moved to the next phase, excluding any Proposals that the State disqualifies because of excessive cost or other irregularities.

If the State finds that it should give one or more of the highest-ranking Proposals further consideration, the State may move the selected Proposals to the next phase. The State alternatively may choose to bypass any or all subsequent phases and make an award based solely on its scoring of the preceding phases, subject only to its review of the highest-ranking offeror's responsibility, as described below.

Requests for More Information. The State may require some offerors to interview, make a presentation about their Proposals, or demonstrate their products or services. If the presentations, demonstrations, or interviews are held as part of the technical evaluation phase, all offerors that have Proposals under evaluation may participate. Alternatively, if the presentations, demonstrations, or interviews are held after the technical evaluation, the State normally will limit them to one or more of the highest ranking offerors. The State normally will limit such presentations, demonstrations, and interviews to areas in which it seeks further information from the highest ranking offeror or offerors. Typically, these discussions provide an offeror with an opportunity to do one or more of the following:

- Clarify its Proposal and ensure a mutual understanding of the Proposal's content;
- Showcase its approach to the Work;
- Show the features and functions of its proposed hardware, software, or solution; and
- Demonstrate the professionalism, qualifications, skills, and work knowledge of its proposed candidates.

The State will schedule the presentations, demonstrations, and interviews at its convenience and discretion. The State will determine the scope and format of any such presentations, demonstrations, and interviews and may record them. If the State moves more than one offeror to this phase, the scope and format of these presentations, demonstrations, and interviews may vary from one offeror to the next, depending on the particular issues or concerns the State may have with each offeror's Proposal.

The State normally will not rank interviews, demonstrations, and presentations. Rather, if the State conducts the interviews, demonstrations, or presentations as part of the technical evaluation, the State may use the information it gathers during this process in evaluating the technical merits of the Proposals. If the State holds the demonstrations, presentations, or interviews only for one or more of the top-ranking

offerors after the evaluation phase, the State may decide to revise its existing Proposal evaluations based on the results of this process.

Determination of Responsibility. The State may review the background of one or more of the highest-ranking offerors and its or their key team members and subcontractors to ensure their responsibility. For purposes of this RFP, a key team member is a person that an offeror identifies by name in its Proposal as a member of its proposed team. The State will not award the Contract to an offeror that it determines is not responsible or that has proposed candidates or subcontractors to do the Work that are not responsible. The State's determination of an offeror's responsibility may include the following factors: experience of the offeror and its key team members and subcontractors, its and their past conduct on previous contracts, past performance on previous contracts, ability to execute this Contract properly, and management skill. The State may make this determination of responsibility based on the offeror's Proposal, reference evaluations, a review of the offeror's financial ability, and any other information the State requests or determines is relevant.

Some of the factors used in determining an offeror's responsibility, such as reference checks, may also be used in the technical evaluation of Proposals in phase two of the evaluation process. In evaluating those factors in phase two, the weight the State assigns to them, if any, for purposes of the technical evaluation will not preclude the State from rejecting a Proposal based on a determination that an offeror is not responsible. For example, if the offeror's financial ability is adequate, the value, if any, assigned to the offeror's relative financial ability in relation to other offerors in the technical evaluation phase may or may not be significant, depending on the nature of the Work. If the State believes the offeror's financial ability is inadequate, the State may reject the offeror's Proposal despite its other merits.

The State may make a responsibility determination at any time during the evaluation process, but it typically will do so only once it has evaluated the technical merits and costs of the Proposals. The State always will review the responsibility of an offeror selected for an award before making the award, if it has not already done so earlier in the evaluation process. If the State determines that the offeror selected for award is not responsible, the State then may go down the line of remaining offerors, according to rank, and determine responsibility with the next highest-ranking offeror.

Reference Checks. As part of the State's determination of an offeror's responsibility, the State may conduct reference checks to verify and validate the offeror's and its proposed candidates' and subcontractors' past performance. Reference checks that indicate poor or failed performance by the offeror or a proposed candidate or subcontractor may be cause for rejection of the offeror's Proposal. Additionally, the State may reject an offeror's Proposal as non-responsive if the offeror fails to provide requested reference contact information.

The State may consider the quality of an offeror's and its candidates' and subcontractors' references as part of the technical evaluation phase, as well as in the State's determination of the offeror's responsibility. The State also may consider the information it receives from the references in weighing any requirement contained in the technical evaluation phase, if that information is relevant to the requirement. In checking an offeror's or any of its proposed candidates' or subcontractors' references, the State will seek information that relates to the offeror's previous contract performance. This may include performance with other governmental entities, as well as any other information the State deems important for the successful operation and management of the Work and a positive working relationship between the State and the offeror. In doing this, the State may check references other than those provided in the offeror's Proposal. The State also may use information from other sources, such as third-party reporting agencies.

Financial Ability. Part of State's determination of an offeror's responsibility may include the offeror's financial ability to perform the Contract. This RFP may expressly require the submission of audited financial statements from all offerors in their Proposals, but if this RFP does not make this an express requirement, the State still may insist that an offeror submit audited financial statements for up to the past three years, if the State is concerned that an offeror may not have the financial ability to carry out the

Contract. Also, the State may consider financial information other than the information that this RFP requires as part of the offeror's Proposal, such as credit reports from third-party reporting agencies.

Contract Negotiations. The final phase of the evaluation process may be contract negotiations. It is entirely within the discretion of the State whether to permit negotiations. An offeror must not submit a Proposal assuming that there will be an opportunity to negotiate any aspect of the Proposal, and any Proposal that is contingent on the State negotiating with the offeror may be rejected. The State is free to limit negotiations to particular aspects of any Proposal or the RFP, to limit the offerors with whom the State negotiates, and to dispense with negotiations entirely. If negotiations are held, they will be scheduled at the convenience of the State, and the selected offeror or offerors must negotiate in good faith.

The State may limit negotiations to specific aspects of the RFP or the offeror's Proposal. Should the evaluation result in a top-ranked Proposal, the State may limit negotiations to only that offeror and not hold negotiations with any lower-ranking offeror. If negotiations are unsuccessful with the top-ranked offeror, the State then may go down the line of remaining offerors, according to rank, and negotiate with the next highest-ranking offeror. Lower-ranking offerors do not have a right to participate in negotiations conducted in such a manner.

If the State decides to negotiate simultaneously with more than one offeror, or decides that negotiations with the top-ranked offeror are not satisfactory and therefore negotiates with one or more of the lower-ranking offerors, the State then will determine if an adjustment in the ranking of the offerors with which it held negotiations is appropriate based on the negotiations. The Contract award, if any, then will be based on the final ranking of offerors, as adjusted.

Auction techniques that reveal one offeror's price to another or disclose any other material information derived from competing Proposals are prohibited. Any oral modification of a Proposal will be reduced to writing by the offeror as described below.

Following negotiations, the State may set a date and time for the offeror(s) with which the State conducted negotiations to submit a best and final Proposal. If negotiations were limited and all changes were reduced to signed writings during negotiations, the State need not require a best and final Proposal.

If best and final Proposals are required, they may be submitted only once, unless the State determines that it is in the State's interest to conduct additional negotiations. In such cases, the State may require another submission of best and final Proposals. Otherwise, discussion of or changes in the best and final Proposals will not be allowed. If an offeror does not submit a best and final Proposal, the State will treat that offeror's previous Proposal as its best and final Proposal.

The State usually will not rank negotiations and normally will hold them only to correct deficiencies in or enhance the value of the highest-ranked offeror's Proposal.

From the opening of the Proposals to the award of the Contract, everyone evaluating Proposals on behalf of the State will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. The State also will seek to keep this information away from other offerors, and the State may not tell one offeror about the contents of another offeror's Proposal in order to gain a negotiating advantage.

Before the award of the Contract or cancellation of the RFP, any offeror that seeks to gain access to the contents of another offeror's Proposal may be disqualified from further consideration.

Negotiated changes will be reduced to writing and become a part of the Contract file, which will be available for public inspection after award of the Contract or cancellation of the RFP, provided the State does not plan to reissue the RFP. If the State plans to reissue the RFP, the Contract file will not be available until the subsequent RFP process is completed. Unless the State agrees otherwise in writing, the offeror must draft and sign the written changes and submit them to the State within five business

days. If the State accepts the changes, the State will give the offeror written notice of the State's acceptance, and the negotiated changes to the successful offer will become a part of the Contract.

Failure to Negotiate. If an offeror fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations with that offeror, remove the offeror's Proposal from further consideration, and seek such other remedies as may be available in law or in equity.

PART FIVE: AWARD OF THE CONTRACT

Contract Award. The State plans to award the Contract based on the schedule in the RFP, if the State decides the Work is in its best interest and has not changed the award date.

Under Ohio's anti-terrorism legislation, effective April 14, 2006, the selected offeror must complete a Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization to certify that the offeror 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 offeror's Proposal. If an offeror answers yes or fails to answer any question on the form, the State may not award the Contract to that offeror. The offeror 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.

Included with this RFP, as Attachment Five, is a sample of the Contract for the RFP. The State will issue two originals of the Contract to the Contractor proposed for award. The offeror must sign and return the two originals to the Procurement Representative. The Contract will bind the State only when the State's duly authorized representative signs all copies and returns one to the Contractor with an award letter and all other prerequisites identified in the Contract have occurred.

The Contractor must begin work within 15 business days after the State issues a purchase order under the Contract. If the State awards a Contract pursuant to this RFP, and the Contractor is unable or unwilling to begin the Work within the time specified above, the State may cancel the Contract, effective immediately on notice to the Contractor. The State then may return to the evaluation process under this RFP and resume the process without giving further consideration to the originally selected Proposal. The State also may seek such other remedies as may be available to the State in law or in equity for the selected offeror's failure to perform under the Contract.

Contract. If this RFP results in a Contract award, the Contract will consist of this RFP, including all attachments, written amendments to this RFP, the Contractor's accepted Proposal, and written, authorized amendments to the Contractor's Proposal. It also will include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The form of the Contract is included as a one-page attachment to this RFP, but it incorporates all the documents identified above. The general terms and conditions for the Contract are contained in Attachment Four to this RFP. 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 one-page Contract (Attachment Five) in its final form;
2. This RFP, as amended;
3. The documents and materials incorporated by reference in the RFP;
4. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, change orders and 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 must sign any change order under or amendment to the Contract.

ATTACHMENT ONE: EVALUATION CRITERIA

Mandatory Requirements. The first table lists this RFP's mandatory requirements. If the offeror's Proposal meets all the mandatory requirements, the offeror's Proposal may be included in the next part of the technical evaluation phase described in the next table.

Mandatory Requirements	Reject	Accept
Offeror Mandatory Requirement		
The offeror must demonstrate that their proposed Electronic Construction Bidding service is currently used by at least one federal, state, or local government entity that has conducted a minimum of 100 construction bidding events with a total value of $100 million over the past two years.		

Scored Criteria. In the technical evaluation phase, the State will rate the technical merits of the Proposals based on the following requirements and the weight assigned to each requirement:

Scored Criteria	Weight	Does Not Meet	Meets	Exceeds	Greatly Exceeds
Offeror Solution					
Implementation Support – The Contractor must provide a point of contact knowledgeable in the implementation of their service products to make process recommendations and advise the State personnel responsible for developing templates, processes and procedures.	25	0	5	7	9
Bidder Administration - The Contractor must provide for the timely registration and creation of credentials for prospective bidders. The Contractor's administration procedures must provide for verifiable identification of the bidder and the bidder's company, allow multiple individuals be associated with a single bidder company, and provide appropriate privacy and security for the bidder's sensitive information.	25	0	5	7	9
Bidder Training - The Contractor must provide training to the State's bidders and prospective bidders on how to locate bidding opportunities, download related documents, respond by submitting a bid, and withdraw or manage submitted bids. The Contractor's training should be available to the bidder on a "just-in-time" basis and should not require travel or pre-registration.	25	0	5	7	9
Bidder Support - The Contractor must provide call center support for the State's bidders and prospective bidders	25	0	5	7	9

Scored Criteria	Weight	Does Not Meet	Meets	Exceeds	Greatly Exceeds
Proposed Solution Requirement					
Infrastructure	10	0	5	7	9
Security and Privacy	25	0	5	7	9
Disaster Recovery Planning	15	0	5	7	9
Proposed Solution – Functional Fit					
Bidders List (Requirement 101-106)	20	0	5	7	9
Plans Distribution (Req 111-112)	10	0	5	7	9
Plan Holders List (Req 121-122)	10	0	5	7	9
Addenda (Req 131-132)	10	0	5	7	9
Bid Submissions (Req 141-146)	20	0	5	7	9
Electronic Security (Req 151-153)	25	0	5	7	9
Bid Tabulation (Req 161-163)	25	0	5	7	9
Bid Evaluation (Req 171-172)	15	0	5	7	9
Results Notification (Req 181-184)	15	0	5	7	9
Bid Form Templates (Req 191-192)	15	0	5	7	9
Training Attributes (Req 201-204)	15	0	5	7	9
Service Attributes (Req 211-215)	20	0	5	7	9

Price Performance Formula. The evaluation team will rate the Proposals that meet the Mandatory Requirements based on the following criteria and respective weights.

Criteria	***Percentage***
Technical Proposal	70%
Cost Summary	30%

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each offeror.

The offeror with the highest point total for the Technical Proposal will receive 700 points. The remaining offerors will receive a percentage of the maximum points available based upon the following formula:

> **Technical Proposal Points =** (Offeror's Technical Proposal Points/Highest Number of Technical Proposal Points Obtained) x 700

There is a maximum of 300 Cost Proposal Points available. The Cost Proposal Points for each offeror will be determined based upon the following formula:

> **Cost Proposal Points** = Total Cost for Evaluation Points + Method of Collection Points

The State will use the following formulas to determine the points awarded to each offeror for the Cost Proposal.

Total Cost for Evaluation Points =
(Lowest Total Cost for Evaluation/Offeror's Total Cost for Evaluation) x 200

A review of potential Contractors for the Electronic Construction Bidding Service revealed that some potential respondents charge the bidder a subscription or per bid fee to submit a bid while other potential respondents charge the project a subscription or per bid fee to post the bidding event. The State wants to encourage bids from either business model while recognizing that some models result in an increase in administration work to the project team.

100 Cost Proposal Points will be awarded to the proposal that results in the least administration work related to fee collection for the State's construction project team. All proposals will start with 100 points. Points will be deducted as follows:

Fees Charged to the Prospective Bidder

- Per event fee charged to view and/or download bid information (deduct 50 points)
- Subscription fee charged to view and/or download bid information (deduct 25 points)
- No fees to view and download bid information (no deduction)

Fees Charged to Submit a Bid

- Per event fee charged to submit a bid on a single event (deduct 25 points)
- Subscription fee charged to submit unlimited bids over time (deduct 10 points)
- Bidder may choose either the subscription fee or per contract fee method (no deduction)

Fees Charged to the Project Owner or Project Team for Submitting/Completing an event

- Per event fee for submitting an event (deduct 50 points)
- Subscription fee for an agency to submit unlimited events (deduct 25 points)
- Subscription fee for a construction manager or architect to submit unlimited events (deduct 25 points)
- No fees to submit an event (no deduction)

Fees Charged to the State of Ohio

- Periodic billing based on actual number of events or estimated/actual dollar value of awarded contracts (deduct 50 points)
- A single annual subscription fee for unlimited use (deduct 30 points)
- No fees to State of Ohio (no deduction)

If an offeror has more than 100 points of deductions accumulated, they will receive a score of 0 points on this section.

The Total Points Score is calculated using the following formula:

Total Points Score = Technical Proposal Points + Cost Proposal Points

ATTACHMENT TWO: WORK REQUIREMENTS AND SPECIAL PROVISIONS
PART ONE: WORK REQUIREMENTS

This attachment describes the Work and what the Contractor must do to fulfill the Contractor's commitments and responsibilities under the Contract. It also describes what the Contractor must deliver as part of the completed Work (the "Deliverables"). Additionally, it gives a detailed description of the Work's schedule.

Scope of Work. The State requests a proposal for a Contractor-hosted service accessible via the web to meet the Electronic Construction Bidding, common supportive and technical requirements as documented in Supplement One – State of Ohio Electronic Construction Bidding Requirements, and this RFP. Second, this RFP requests an implementation proposal for the Work as defined here.

The following phases, or work activities for the State's Electronic Construction Bidding solution are anticipated:

1. Work Initiation;
2. Establish Web-based, Secure Bidding Service
3. Implementation Support;
4. Bidder Services
5. System Enhancements

The State intends to procure services for the Electronic Construction Bidding solution through a single Contract with the selected, qualified Contractor. It will be the Contractor's obligation to ensure that its Electronic Construction Bidding solution meets the State of Ohio's identified requirements and Deliverables.

The primary goal of the State is to implement an Electronic Construction Bidding solution that meets the State's specifications and requirements as identified in this RFP. The primary tasks the Contractor must perform during the Work will be to assure accuracy, usability, completeness, and timeliness of the proposed solution and all Work Deliverables.

The State requests a proposal for a solution to meet the Electronic Construction Bidding requirements as documented in Attachment One, Supplement One, and this RFP.

Hosting Services. The Contractor must offer this service in such a manner that the State of Ohio has no responsibility for the database, the electronic bidding system software, or the technical infrastructure and associated processes and procedures. Access to the system and the underlying database must be accessible through the web and must be secure and role based.

The Contractor may document that the Electronic Construction Bidding solution is accessible via the Internet through a web-enabled personal computer and mobile application functionality (hand held devices).

In addition, the Contractor must commit to comply with all state and federal laws and regulations concerning data confidentiality and security.

Public Access. The Contractor's solution must facilitate and allow public access to information on completed bid events. The Contractor's solution must also provide the public with the ability through an online web portal where certain appropriate documents and data meant for public consumption can be made accessible, without fee or signup, in a searchable and meaningful format.

User Interface. The Contractor's Electronic Construction Contract Bidding solution must provide a user-friendly, web-enabled interactive environment, which will support a wide variety of users at all levels of OSFC/SAO activities as appropriate to meet the requirements set forth in the RFP and Supplements.

The solution must support a complete user environment that supports several layers of users with the appropriate integrity:

Business Continuity. The Contractor must provide a business continuity plan to ensure that the Contractor's Electronic Construction Contract Bidding solution and the State's business environment are recoverable from and remains in operation during an unexpected crisis. The Contractor's business continuity plan must provide for the continuation of business during 5:00 a.m. to 11:59 p.m., Columbus, Ohio local time, seven days a week, including State Holidays, with no interruptions or loss of services, other than for scheduled application software and database updates, upgrades and software maintenance. In addition, the business continuity plan and methodology provided by the Contractor must easily adapt to vulnerabilities and ever-changing threats and integrates privacy and security into the business continuity process.

State and OSFC/SAO Roles and Responsibilities. The State will provide Work management and will develop templates, processes and procedures for using the Electronic Construction Bidding Service, but the Contractor must provide implementation support and perform the tasks identified in this RFP. The Contractor also must assist the State with coordinating assignments for State staff, if any, involved in the Work. Additionally, the Contractor must provide all administrative support for its staff and activities.

Contractor Responsibilities and Deliverables. The Contractor must meet all RFP requirements and complete all Work milestones and Deliverables, as provided in the Work Plan. The Contractor is asked to propose a project team they best believe will meet the needs for implementing the Electronic Construction Bidding Service, and minimize risk.

1. Work Initiation

The purpose of the Work Initiation activity is to confirm that the Contractor and the State have the same understanding of the Scope of Work; which is to implement a Contractor-hosted Electronic Construction Bidding Service that meets the requirements identified in this RFP and Supplements.

Kickoff Meeting and Detailed Work Plan - After Contract Award by the State, the Contractor must attend a Kickoff Meeting and review the State's detailed Work Plan that specifies tasks, responsibilities and details to successfully implement the proposed solution for the State.

Contractor Deliverables:

1. Attend Kickoff Meeting and on-going Project Status Meetings.

State Responsibilities:

1. Develop and maintain the project Work Plan
2. Schedule and facilitate the Kickoff Meeting and periodic project status meetings

2. Establish Web-Based Secure Bidding Service

The Contractor must setup and provide a development environment for the State to use in development of associated templates, processes, and procedures as well as a production environment to be used for live bidding events.

Development Environment Setup – The State intends to develop templates, processes, and procedures to guide the creation of bid documents and bid forms by project participants. The Contractor must provide access to a development environment suitable for such development activities. At a minimum, this environment should:

- allow development of template bid forms in a private, secure environment
- allow the State to conduct test or demonstration bid events
- allow promotion of approved bid form templates to be available in the production environment

- be available for the duration of the contract

Production Environment Setup – The Contractor must provide access to a secure, Contractor-hosted production environment. At a minimum, this environment should:

- Meet the requirements listed in Supplement One – State of Ohio Electronic Construction Bidding Requirements.

Contractor Deliverables:

2. Electronic Construction Contract Bidding Development Environment
3. Electronic Construction Contract Bidding Production Environment

State Responsibilities:

3. Identify individuals who will access the Development Environment and provide proper registration information
4. Identify individuals who will access the Production Environment and provide proper registration information

3. Implementation Support.

The State will be responsible for developing and approving the templates, processes, and procedures for use of the Electronic Construction Bidding Service by project personnel on State sponsored projects. The Contractor must provide a point of contact knowledgeable in the implementation of their service products to make process recommendations and advise the State personnel responsible for developing templates, processes and procedures. It is not required that the point of contact be exclusively assigned to this project but they must be readily available on demand and must participate in all status meetings. The point of contact must provide:

- best practices for using the Contractor's service
- alternatives for implementing State contracting models such as Multiple Prime and for implementing Alternates in the Bid Schedule
- recommendations for appropriate policies and procedures to ensure efficient, orderly, and consistent application of the service by construction project personnel

Contractor Deliverables:

4. Knowledgeable point of contact to guide development of templates, processes, and procedures

State Responsibilities:

5. Develop bid form templates for use by project personnel
6. Develop policies and procedures for use of the Electronic Construction Bidding Service
7. Approve and communicate templates, policies, and procedures

4. Bidder Services

The Contractor must provide administration, training, and support for all interested bidders on State sponsored construction projects.

Bidder Administration – The Contractor must provide for the timely registration and creation of credentials for prospective bidders. The Contractor's administration procedures must provide for:

- verifiable identification of the bidder and the bidder's company
- multiple individuals associated with a single bidder company
- appropriate privacy and security for the bidder's sensitive information

Bidder Training – The Contractor must provide training to the State's bidders and prospective bidders on how to locate bidding opportunities, download related documents, respond by submitting a bid, and withdraw or manage submitted bids.

The Contractor's training should be available to the bidder on a "just-in-time" basis and should not require travel or pre-registration.

Bidder Support – The Contractor must provide call center support for the State's bidders and prospective bidders to assist bidders with:

- connectivity issues
- workstation and software compatibility issues
- issues downloading documents associated with the bid event
- issues uploading documents associated with the bidder's bid response
- issues submitting or withdrawing a bid
- any other bidder related issues that may arise from time to time

The Contractor's call center must be available five days a week, excluding State Holidays, from 7 AM EST to 5 PM EST.

Contractor Deliverables:

5. Call center to support all State bidders and prospective bidders

State Responsibilities:

8. Communicate support availability to bidders and prospective bidders

5. System Enhancements

For any requirements item in Supplement One where the Contractor indicated the functionality could be "Met with Enhancements" the Contractor must provide to the State the time needed to implement the system requirement in their RFP response.

Contractor Deliverables:

6. Implement specified system enhancements

State Responsibilities:

9. Specify any system enhancements identified by the Contractor in their response that the State requires as part of the contract

Service Level Agreement (SLAs). The Contractor must meet the following performance specifications for the Service Level Agreements (SLAs) to be established between the Contractor and the State of Ohio. The section contains the expectations related to service level commitments and the implications of meeting versus failing to meet the service level requirements and objectives, as applicable.

Both the State and the Contractor recognize and agree that new categories of Service Levels and performance standards may be added or adjusted during the term of the Contract as business objectives, organizational objectives and technological changes permit or require.

The Contractor will not be liable for any failed Service Level caused by circumstances beyond its control, and that could not be avoided or mitigated through the exercise of prudence and ordinary care, provided that the Contractor immediately notifies the State in writing and takes all steps necessary to minimize the effect of such circumstances and resumes its performance of the Services in accordance with the SLAs as soon as possible.

Service Level Commitments. The Contractor will meet the Service Level commitment for each Service Level set forth in the charts below:

Service Level	State Requirements		
	Support Hours	Required	
		Response	Resolution
System Availability. The Contractor-hosted Electronic Construction Contract Bidding system must provide for the continuation of business with no interruptions and loss of services, other than for scheduled application software and database updates, upgrades and software maintenance.	5:00 am – 11:59 pm (Columbus, Ohio local time, 7 days a week, including State Holidays)		
Disaster Recovery & Business Continuity. Contractor must provide standard disaster recovery business continuity procedures and processes.			Services must be restored within 48 hours.
User Support. Contractor must provide ongoing service to all bidders, project staff posting bids, and State of Ohio staff on accessing the system and using the system functions within 24 hours of request.		1 business day	
Registration of Bidders. Contractor must provide for registration of new prospective bidders	n/a	5 business days following receipt of completed application	

If any of the service level performance standards indicated above are not maintained for the Contractor-hosted Electronic Construction Bidding Service for any monthly period, the State may be entitled to liquidated damages. On the first SLA failure in a calendar month the State will notify the Contractor that service levels are not being met. The Contractor must investigate the root cause of the service level failure, notify the State of the root cause, and agree to a plan of corrective actions within 72 hours. For any subsequent SLA failures the Contractor will pay liquidated damages of $100 for each loss of service. In an event where the loss of service event causes the State to postpone or rescheduled one or more bid openings, the Contractor will instead pay liquidated damages of $1,000 per bid opening delayed.

Work Hours and Conditions. The Contractor must work with the State's OSFC/SAO project staff and other contractors who may be involved with the Electronic Construction Bidding work. Normal working hours are 8:00 a.m. to 5:00 p.m., Columbus, Ohio local time, with a one-hour lunch period. The Contractor must ensure that appropriate Contractor resources are available to interact with State Project staff and perform the Work identified in this RFP.

PART TWO: SPECIAL PROVISIONS

Software Licenses. The Contractor must provide or arrange for appropriate software licenses to meet the internal, external and general public user access to the Contractor's proposed Electronic Construction Bidding solution necessary to meet the requirements of this RFP. The Contractor must procure and provide the software licensing required to meet the State's current need, as identified in this RFP and as disclosed in the offeror's Cost Summary. The Electronic Construction Bidding software licensing model provided by the Contract must allow all users as identified in this RFP that need to have access as appropriate (e.g., user permissions) to applicable information and data in the solution. The Electronic Construction Bidding software licensing must also give the State the right to provide the authorized individuals access to the Electronic Construction Bidding solution remotely through a browser or client software and an Internet or similar connection for all uses and purposes identified above.

Submittal of Deliverables. The Contractor must perform its tasks in a timely and professional manner that produces Deliverables that fully meet the Contract's requirements. The Contractor must complete its work in steps that will result in Deliverables associated with those steps, and the Contractor must provide the required Deliverables no later than the due dates proposed in the RFP or included in the Contractor's Work Plan as approved by the State. At the time of delivery of a written Deliverable, the Contractor must submit an original and one copy of each Deliverable, plus an electronic copy. The Contractor must provide the electronic copy in a file format acceptable to the State. Also, with each Deliverable, the Contractor must submit a Deliverable Submittal Form signed by the Work Manager. (See Attachment Six of the RFP.)

By submitting a Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that meets the Contract's requirements.

The Contractor must provide all Deliverables to the Work Representative (e.g., OSFC/SAO Project Manager), who will review (or delegate review of) the materials or documents within a reasonable time after receipt, as specified in the Work Plan.

If the State determines that a Deliverable is not in compliance, the Work Representative will note the reason for non-compliance on the Deliverable Submittal Form and send the form to the Work Manager. At no expense to the State, the Contractor then must bring the Deliverable into conformance and re-submit it to the Work Representative within ten business days.

If the State agrees the Deliverable is compliant, the Work Representative will indicate that by signing the Deliverable Submittal Form and returning a copy of it to the Contractor. In addition, if the Work Representative or designee determines that the State should make a payment associated with the Deliverable, the Work Representative will indicate that the payment should be made on the Deliverable Submittal Form.

The State form authorizing payment (Attachment Six) and the payment itself do not indicate that the State has accepted the Deliverables associated with the payment. The State's acceptance of the Deliverables that are part of developing the Work is conditioned on a successful performance test upon completion of the Work.

Status reports are not subject to a review and approval process.

The Contractor's Fee Structure. The State expects the Contractor to recover their costs associated with this Contract by changing User Fees to project owners for posting bidding opportunities to the service and/or charging User Fees to prospective bidders for the ability to view or submit bids. The State prefers fees be collected from prospective bidders to minimize administration work necessary to conduct a bidding event. If fees are collected from the project owner, the State prefers to pay a single annual subscription fee for unlimited usage as opposed to paying fees for each project posted for bid.

See Special Terms and Conditions: Financial – Fees, Billing, and Payment (Attachment Eleven) for additional terms.

Examples are provided below, to illustrate how the form is to be filled out. It is the vendor's responsibility to understand how to respond, how their response will be evaluated and to propose their own Fee Structure.

Example 1:

Service Fee Schedule	Fee Amount
Fees Charged to Prospective Bidders	
There will be no fees charged to the State of Ohio. Perspective Bidders will be charged a yearly fee to access our system and will be permitted to submit as many or few times as the choose.	$____ YEARLY PER BIDDER
Fees Charged to Bidders to Submit a Bid	
No fees are charged for submitting bids, provided the prospective bidder has already paid their yearly subscription to our site.	
Fees Charged to the Project Owner or Project Team	
No additional fees are charged by Projects Owners/Project Teams who submit their events.	
Fees Charged to the State of Ohio	
No additional fees are charged to the State of Ohio.	

Example 2:

Service Fee Schedule	Fee Amount
Fees Charged to Prospective Bidders	
No additional fees are charged to prospective bidders.	
Fees Charged to Bidders to Submit a Bid	
No additional fees are charged for submitting bids.	
Fees Charged to the Project Owner or Project Team	
No additional fees are charged by Projects Owners/Project Teams who submit their events.	
Fees Charged to the State of Ohio	
We offer the State of Ohio to pay a yearly fee enabling all bidders and agencies to participate in an all-you-can-use style system. This fee is billed annually to the State of Ohio.	$____ YEARLY TO THE STATE OF OHIO

Example 3:

Service Fee Schedule	Fee Amount
Fees Charged to Prospective Bidders	
No additional fees are charged to prospective bidders.	
Fees Charged to Bidders to Submit a Bid	
A per event fee is charged to submit a bid. Prospective bidders are able to login, view and maintain their presence on the site, but upon submission, they are charged.	$____ PER SUBMISSION BY BIDDER
Fees Charged to the Project Owner or Project Team	
No additional fees are charged by Projects Owners/Project Teams who submit their events.	
Fees Charged to the State of Ohio	
No additional fees are charged to the State of Ohio.	

Example 4:

Service Fee Schedule	Fee Amount
Fees Charged to Prospective Bidders	
No additional fees are charged to prospective bidders.	
Fees Charged to Bidders to Submit a Bid	
No additional fees are charged by Projects Owners/Project Teams who submit their events.	
Fees Charged to the Project Owner or Project Team	
An event fee is charged to the Project Owner to submit and complete the event. The event fee for the first 100 bids are $____ each, after which the fee becomes $____ per completed event.	$____ PER EVENT (FOR FIRST 100 EVENTS), $____ PER EVENT AFTERWARDS
Fees Charged to the State of Ohio	
No additional fees are charged to the State of Ohio.	

Reimbursable Expenses. None.

Bill to Address.

Invoices must be submitted to the office designated in the purchase order as the "bill to address".

Executive Order. Subject to Executive Order 2011-12K, all services must be performed within the United States.

Transition Requirements. If this Contract is not renewed at the end of a term, or is terminated prior to the completion of a term, for any reason, the Contractor must provide for a reasonable period of time for transition after the expiration or termination of this project or Contract. All reasonable transition assistance requested by the State of Ohio, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State of Ohio. The Contractor must provide transition services to the State at the current Contract cost. The transition plan must minimally include conversion of data at the end of the Contract. Once data conversion is complete, the Contractor must delete all data on its system relating to the Electronic Construction Bidding Service Provider System within 10 days.

In the event that a subsequent contractor is unable to assume operations on the planned date for transfer, the Contractor must continue to perform the Electronic Construction Bidding Service Provider System Project operations on a month-to-month basis at the current cost for up to six (6) months beyond the planned transfer date. The State will provide the Contractor a thirty (30) day notice of an extension.

ATTACHMENT THREE: REQUIREMENTS FOR PROPOSALS

Proposal Format. Each Proposal must include sufficient data to allow the State to verify the total cost for the Work and all of the offeror's claims of meeting the RFP's requirements. Each Proposal must respond to every request for information in this attachment, whether the request requires a simple "yes" or "no" or requires a detailed explanation. Simply repeating the RFP's requirement and agreeing to comply may be an unacceptable response and may cause the Proposal to be rejected.

These instructions describe the required format for a responsive Proposal. The offeror may include any additional information it believes is relevant. An identifiable tab sheet must precede each section of a Proposal, and each Proposal 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 non-conforming Proposal.

Each Proposal must contain the following:

Vendor Information Form
Subcontractor Letters (if required)
Offeror Certification
Offeror Description
Offeror Profile Summary Forms
Proposed Electronic Construction Bidding Service Solution
Electronic Construction Bidding Requirements Response (Supplement One)
Assumptions
Support Requirements
Conflict of Interest Statement
Proof of Insurance
Payment Address
Legal Notice Address
W-9 Form
Declaration Regarding Terrorist Organizations
Standard Affirmation and Disclosure Form
Affirmative Action

Cost Summary (must be in a separately sealed package)

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

Subcontractor Letters. For each proposed subcontractor, the offeror must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:

1. The subcontractor's legal status, federal tax identification number, D-U-N-S number, and principal place of business address;
2. The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;
3. A description of the work the subcontractor will do;
4. A commitment to do the work if the offeror is selected; and
5. A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.

Offeror Certification. The offeror must complete Attachment Seven, Offeror Certification Form.

Offeror Description. Each Proposal must include a description of the offeror's capability, capacity, and experience in the industry. The description should include the date the offeror was established, its

leadership, number of employees, number of employees the offeror will engage in tasks directly related to the Work, and any other background information that will help the State gauge the ability of the offeror to fulfill the obligations of the Contract.

Offeror Profile Summary Forms. This RFP includes an Offeror Profile Summary Form as an attachment. The offeror must use this form and fill it out completely to provide the required information.

> **The Offeror Profile Summary Form contained in this document has been customized for the applicable offeror requirements. (Refer to Attachment Eight.) Each page of the form may contain minor variations. If an offeror elects to duplicate the form electronically, the offeror must carefully review each page of the form to ensure that it has been copied accurately. Failure to duplicate the form exactly may lead to the rejection of the offeror's Proposal.**

Each offeror must meet all the mandatory requirements in the RFP. If an offeror does not meet all the mandatory requirements, the State may reject the offeror's Proposal as non-responsive.

The various sections of the Offeror Profile Summary Forms are described below:

a) **Mandatory Experience and Qualifications.** The offeror must complete this section to demonstrate that it has the experience needed to meet the RFP's mandatory requirements. (Refer to Attachment Eight.) For each reference, the offeror must provide the following information:
   - Contact Information. The offeror must provide a client contact name, title, phone number, email address, company name, and mailing address. The offeror also must include the same information for an alternate client contact, in case the State cannot reach the primary contact. Failure to provide this information or providing information that is inaccurate or out of date may result in the State not including the reference in the evaluation process or rejecting the offeror's Proposal. The contact information given must be for a person within the client's organization and not a co-worker or a contact within the offeror's organization, subsidiaries, partnerships, etc.
   - Work Name. The offeror must provide the name or title for the work, such as a project name, from which it obtained the mandatory experience.
   - Dates of Experience. The offeror must complete this area with a beginning month and year and an ending month and year to show the length of time the offeror performed the work, not just the length of time the offeror was engaged by the reference.
   - Description of the Related Service Provided. The State will not assume that, since the experience requirement is provided at the top of the page, all descriptions on that page relate to that requirement. The offeror must reiterate the experience being described, including the capacity in which the work was performed and the role of the offeror on the Work. It is the offeror's responsibility to customize the description to clearly substantiate the qualification.
   - Description of how the related service shows the offeror's experience, capability, and capacity to develop the Deliverables and do the Work.

   The offeror must list each work experience separately and completely every time it is referenced, regardless of whether it is on the same or different pages of the form.

THE OFFEROR MAY NOT USE THE EXPERIENCE OR QUALIFICATIONS OF A SUBCONTRACTOR TO MEET ANY OF THE ABOVE MANDATORY QUALIFICATIONS OR EXPERIENCE. THESE MUST BE FULFILLED EXCLUSIVELY THROUGH THE QUALIFICATIONS AND EXPERIENCE OF THE OFFEROR. If the offeror seeks to meet any of the other qualifications and experience through a subcontractor, the offeror must identify the subcontractor by name in the appropriate part of the Offeror Profile Summary Form, in Attachment Eight to this RFP, for each reference.

Proposed Electronic Construction Bidding Service Solution. The offeror must describe in detail how its proposed hosted Electronic Construction Bidding solution meets the program, common supportive

technical requirements described in this RFP. The offeror may not simply state that the proposed solution will meet or exceed the specified requirements. Instead, the offeror must provide a written narrative that shows that the offeror understands the functionality and the technical requirements of this RFP and how the offeror's proposed solution meets those requirements.

Additionally, the offeror must describe how its proposed solution will provide the following:

Hosting Services. The State requires a solution where the State has no responsibility for the operations and administration of the database, the electronic bidding software, or the technical infrastructure and associated processes and procedures. The proposed solution's functionality and data must be accessible through the web and must be secure.

The hosting services description must document that the Electronic Construction Bidding Service solution the offeror will provide is accessible to web-enabled personal computer by accessing the offeror's computer system(s) and infrastructure via the Internet.

User Interface and Public Access. The offeror must provide an overview of the user interface that will be utilized by the State to access the proposed Electronic Construction Bidding Service solution. This overview must describe the solution functionality available to the State's user community (e.g., internal users, external users and general public), including standard and ad hoc reporting and query features and capabilities.

Business Continuity. The offeror must provide a description of its "Business Continuity Plan" for the Electronic Construction Bidding Service solution for the State's business environment. The Business Continuity Plan at a minimum must provide, a hosted solution that:

- Is recoverable from and remains in operation during an unexpected crisis, including backup and disaster recovery process and procedures;
- Provides continuation of business from 5:00 a.m. to 11:59 p.m., Columbus, Ohio local time, seven (7) days a week, including State Holidays, with no interruptions or loss of services, other than for scheduled application software and database updates and upgrades; and
- Provides a business continuity plan and methodology that is easily adaptable to vulnerabilities, ever-changing threats and integrates privacy and security into the business continuity process.

Software Licensing Methodology and Model. The offeror must provide a description of the Software Licensing Methodology and Model for all Commercial Software as proposed to meet user requirements for the offeror's proposed Electronic Construction Bidding solution. The description of the software licensing methodology and model must include a list of all of the offeror's proposed software products and tools, to meet the requirements identified in the RFP; including the software usage rights.

Additionally, the offeror should also include information on the proposed Electronic Construction Bidding solution regarding the following:

- Describe the offeror's capabilities to integrate mobile applications within the proposed solution;
- Describe the offeror's capabilities to provide for the State's ability to create customized reports/queries, please include a list of offeror recommended software products and tools (e.g., Crystal Reports, etc.) that are being utilized currently by your clients;
- Describe the offeror's production support offering and capabilities;
- Describe the offeror's notification procedures to escalate notification of security issues, including breaches and attempted breaches;
- Describe the offeror's process for upgrading and enhancing the architecture and infrastructure environment (e.g., hardware, system software and tools, network components, etc.) that will support the proposed Electronic Construction Bidding Service solution;

- Describe the average cycle time by which new versions and upgrades of the software are released, and how consistently this has occurred historically; and
- Describe how software changes or enhancements are incorporated into a release, and the quality assurance program governing this process.

Electronic Construction Bidding Requirements Response – Supplement One. The offeror's proposed solution for the program, common supportive and technical requirements documented in Supplement One of this RFP should be met with the offeror's proposed hosted solution.

Supplement One is being provided as a Microsoft Word document through the State's Procurement Website as a convenience for responding to the RFP. **The Supplement's format and content must not be modified.** If the requirements or format provided in the supplement are modified, reformatted or omitted, the offeror's response may be disqualified.

For each requirement documented in the RFP the offeror must provide a narrative description of its solution. The offeror must also provide a summary of any COTS products or other software tools that will be used to meet the requirements. For each requirement identified, the offeror must indicate how the requirement (program, common supportive or technical) is delivered by checking one of the following boxes in Supplement One:

Meets: Requirement will be fully met with out-of-the-box functionality that can be presented for business use with minimal effort beyond turning a feature "on" or "off" (e.g., built in processes, rules or reports).

Meets with Enhancements: Requirement will be met with functionality that is currently part of the product roadmap and will be implemented into production within six months of the due date of this RFP. For items in this category, the offeror must describe the planned functionality and identify the expected release version number and implementation date of the functionality into production.

Does Not Meet: This requirement cannot be met by the current service and is not expected to be available within the six months following the due date of this RFP.

Description: The offeror should describe how the requirement will be met by the offeror's service offerings. The offeror may also use this column for narrative and/or additional comments as applicable.

Training and User Manuals. The offeror must describe its proposed approach, methods, tools, and techniques for training bidders, prospective bidders, architects preparing bid forms for the State and State project administration personnel, including Help Desk support, training development, and deployment. The offeror should include information regarding:

- Training approaches and what types of training will be offered on site and via the web (e.g., self-directed and live, interactive virtual training, train-the-trainer, traditional classroom training, subscription based training programs, etc.);
- What the offeror proposes to provide to the State for both initial and ongoing training;
- Certifications that may be available; and
- Documentation and tutorials that will be available during and following the Project.

Bidder Support and Administration. The offeror must fully describe its approach and delivery of bidder support and administration. The offeror must also describe their approach to validating a prospective bidder's identity and providing secure bidding credentials for use in submitting bids to the State. The offeror should include information regarding:

- The offeror's Technical Support organization and structure;
- Number, size and location of support centers currently in operation;
- Hours of operation/availability for the Technical Support organization and centers;

- Description of how support issues are fielded, logged, categorized, addressed / staffed, checked for status, and escalated (e.g., the service management model, Tiers I, II, and III, etc.).

Assumptions. The offeror must list all the assumptions the offeror made in preparing the Proposal. If any assumption is unacceptable to the State, the State may reject the Proposal. No assumptions may be included regarding negotiation, terms and conditions, or requirements.

Support Requirements. The offeror must describe the support it wants from the State other than what the State has offered in this RFP. Specifically, the offeror must address the following:

- Nature and extent of State support required in terms of staff roles, percentage of time available, and so on;
- Assistance from State staff and the experience and qualification levels required; and
- Other support requirements.

The State may not be able or willing to provide the additional support the offeror lists in this part of its Proposal. The offeror therefore must indicate whether its request for additional support is a requirement for its performance. If any part of the list is a requirement, the State may reject the offeror's Proposal, if the State is unwilling or unable to meet the requirements.

Conflict of Interest Statement. Each Proposal must include a statement indicating whether the offeror or any people that may work on or benefit from the Work through the offeror have a possible conflict of interest (e.g., employed by the State of Ohio, etc.) and, if so, the nature of that conflict. The State may reject a Proposal in which an actual or apparent conflict is disclosed. The State also may terminate the Contract if it discovers any actual or apparent conflict of interest that the offeror did not disclose in its Proposal.

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

Payment Address. The offeror must give the address to which the State should send payments under the Contract.

Legal Notice Address. The offeror must give the name, title, and address to which the State should send legal notices under the Contract.

W-9 Form. The offeror must complete the attached W-9 form in its entirety. The offeror must submit at least one originally signed W-9. All other copies of a Proposal may contain copies of the W-9. The offeror must indicate on the outside of the binder which Proposal contains the originally signed W-9. A current version of the Internal Revenue's W-9 form is available at http://www.irs.gov/pub/irs-pdf/fw9.pdf.

Declaration Regarding Terrorist Organizations. The offeror must complete a Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization in its entirety. The offeror must submit at least one originally signed copy of this form, which should be included with the offeror's originally signed Proposal. All other copies of the offeror's Proposal may contain copies of this form. The form is available at: http://www.homelandsecurity.ohio.gov .

Standard Affirmation and Disclosure Form. The offeror must complete and sign the Affirmation and Disclosure Form (Attachment Nine) as part of its Proposal.

Affirmative Action. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using:
http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification/tabid/133/Default.aspx.

Approved Affirmative Action Plans can be found by going to the Equal Opportunity Department's Web site: http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx.

Copies of approved Affirmative Action plans must be supplied by the offeror as part of its Proposal or inclusion of an attestation to the fact that the offeror has completed the process and is pending approval by the EOD office.

Cost Summary. This RFP includes Cost Summary Forms provided as an Attachment Ten. **Offerors may not reformat the Cost Summary forms.** Each offeror must complete the Cost Summary Forms in the exact format provided, since the State may reject any Proposal with reformatted Cost Summary Forms or that is not provided in a separately sealed package. (See: Part Three: General Instructions, Proposal Submittal.)

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

The offeror's total cost for the Work must be represented as the not-to-exceed fixed price.

The State will not be liable for or pay any Work costs that the offeror does not identify in its Proposal.

ATTACHMENT FOUR: GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

Statement of Work. The RFP and the Contractor's Proposal (collectively, the "RFP Documents") are a part of this Contract and describe the work (the "Work") the Contractor will do and any materials the Contractor will deliver (the "Deliverables") under this Contract. The Contractor must do the Work in a professional, timely, and efficient manner and will provide the Deliverables in a proper fashion. The Contractor also must furnish its own support staff necessary for the satisfactory performance of the Work.

The Contractor will consult with the appropriate State representatives and others necessary to ensure a thorough understanding of the Work and satisfactory performance. The State may give instructions to or make requests of the Contractor relating to the Work, and the Contractor will comply with those instructions and fulfill those requests in a timely and professional manner. Those instructions and requests will be for the sole purpose of ensuring satisfactory completion of the Work and will not amend or alter the scope of the Work.

Term. Unless this Contract is terminated or expires without renewal, it will remain in effect until the Work is completed to the satisfaction of the State, including all optional renewal periods for maintenance or continuing commitments, and the Contractor is paid. However, the current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each biennium, the first of which is June 30, 2013. The State may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision to do so. This expiration and renewal procedure also will apply to the end of any subsequent biennium during which the Work continues, including any optional renewal periods. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.

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 and 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 Work has a completion date that is identified in the RFP Documents. The RFP Documents also may have several dates for the delivery of Deliverables or reaching certain milestones in the Work. The Contractor must make those deliveries, meet those milestones, and complete the Work within the times the RFP Documents require. If the Contractor does not meet those dates, the Contractor will be in default, and the State may terminate this Contract under the termination provision contained below.

The State also may have certain obligations to meet. Those obligations, if any, are also listed in the RFP Documents. If the State agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to the State's failure to meet its own obligations in a timely fashion, then the Contractor will not be in default, and the delivery, milestone, and completion dates affected by the State's failure to perform will be extended by the same amount of time as the State's delay. The Contractor may not rely on this provision unless the Contractor has in good faith exerted reasonable management skill to avoid an extension and has given the State meaningful written notice of the State's failure to meet its obligations within five business days of the Contractor's realization that the State's delay may impact the Work. The Contractor must deliver any such notice to both the Work Representative and Procurement Representative and title the notice as a "Notice of State Delay." The notice must identify any delay in detail, as well as the impact the delay has or will have on the Work. Unless the State decides, in its sole and exclusive judgment, that an equitable adjustment in the Contractor's Fee is warranted in the case of an extended delay, an extension of the Contractor's time to perform will be the Contractor's exclusive remedy for the State's delay. Should the State determine that an equitable adjustment in the Contractor's Fee is warranted, the equitable adjustment will be handled as a Change Order under the Changes Section of this Contract, and the extension of time and equitable adjustment will be the exclusive remedies of the Contractor for the State's delay.

The State seeks a complete solution to what the Work is intended to accomplish, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's not-to-exceed fixed price. All required components and processes for the Work to be complete and useful to the State are included in the Work and the not-to-exceed fixed price, unless the RFP expressly provides otherwise.

Compensation. In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the RFP Documents (the "Fee"), plus any other expenses identified as reimbursable in the RFP Documents. In no event, however, will payments under this Contract exceed the "not-to-exceed" amount in the RFP Documents without the prior written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Work or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Work tied to the applicable milestone or period. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents the RFP Documents require. 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.

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

The State will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). 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 among the Work Manager, the Contractor's executive responsible for the Work, the Work Representative, and the State Contract Management Administrator. 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.

If the RFP Documents provide for any retainage, the State will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. The State will pay the retainage only after the State has accepted all the Work, and then only in accordance with the payment schedule specified in the RFP Documents. The State will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

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

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

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.

Employment Taxes. All people furnished by the Contractor (the "Contractor Personnel") are employees or subcontractors of the Contractor, and none are or will be deemed employees or contractors of the State. No Contractor Personnel will be entitled to participate in, claim benefits under, or become an "eligible employee" for purposes of any employee benefit plan of the State by reason of any work done under this Contract. The Contractor will pay all federal, state, local, and other applicable payroll taxes and make the required contributions, withholdings, and deductions imposed or assessed under any provision of any law and measured by wages, salaries, or other remuneration paid by or which may be due from the Contractor to the Contractor Personnel. The Contractor will indemnify, defend (with the consent and approval of the Ohio Attorney General), and hold the State harmless from and against all claims, losses, liability, demands, fines, and expense (including court costs, defense costs, and redeemable attorney fees) arising out of or relating to such taxes, withholdings, deductions, and contributions with respect to the Contractor Personnel. The Contractor's indemnity and defense obligations also apply to any claim or assertion of tax liability made by or on behalf of any Contractor Personnel or governmental agency on the basis that any Contractor Personnel are employees or contractors of the State, that the State is the "joint employer" or "co-employer" of any Contractor Personnel, or that any Contractor Personnel are entitled to any employee benefit offered only to eligible regular fulltime or regular part-time employees of the State.

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 Work, such will be the sole and exclusive responsibility of the Contractor. Further, 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: WORK AND CONTRACT ADMINISTRATION

Related Contracts. The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State, such that the Work under this Contract duplicates the work done or to be done under the other contracts.

Other Contractors. The State may hold other contracts for additional or related work, including among others independent verification and validation (IV&V) efforts for the Work. The Contractor must fully cooperate with all other contractors and State employees and coordinate its Work with such other contractors and State employees as may be required for the smooth and efficient operation of all related or additional work. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or the State's employees. Further, the Contractor must fully cooperate with any

IV&V contractor assigned to the Work. Such cooperation includes expeditiously providing the IV&V contractor with full and complete access to all Work products, records, materials, personnel, meetings, and correspondence as the IV&V contractor may request. If the State assigns an IV&V contractor to the Work, the State will obligate the IV&V contractor to a confidentiality provision similar to the Confidentiality Section contained in this Contract. Additionally, the Contractor must include the obligations of this provision in all its contracts with its subcontractors for the Work.

Subcontracting. The Contractor may not enter into subcontracts related to the Work after award without written approval from the State. Nevertheless, 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 Work. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in the RFP Documents.

The State's approval of the use of subcontractors does not mean that the State will pay for them. 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 performance schedule or performance specifications for the Work 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 contractual matters, including payment of all charges resulting from the Contract. Further, 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. 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 damage.

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. Additionally, the Contractor must keep all Work-related records and documents at its principal place of business or at its office where the work was performed.

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

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

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

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

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

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

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

(d) Professional Liability insurance covering all staff with a minimum limit of $1,000,000 per incident and $3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

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.

Performance Bond. The Contractor must provide the Procurement Representative with a performance bond in the amount required by the RFP Documents within 30 business days after receipt of a purchase order for this Contract. The bond must be issued by a company authorized by Ohio's Department of Insurance to do business in Ohio and must indemnify the State against all direct damages it suffers from any failure of the Contractor to perform properly.

Failure of the Contractor to provide the performance bond on or before the date it is required will result in a breach of this Contract without a cure period and termination or suspension (or ultimately both) of this Contract for cause. The performance bond must remain in place through the term of the contract but may be renewed or continued annually with the approval of the State. Further, the terms of the bond must reflect the terms of this section, or the State will reject it and treat the failure of conformance as a failure by the Contractor to deliver the bond in a timely fashion.

Concurrent with the delivery of the performance bond, the Contractor must provide the State with a certified copy of the invoice for the bond from the bonding company. The State will reimburse the Contractor for the lesser of the amount of the performance bond reflected on the bonding company's certified invoice or the cost shown on the Cost Summary of the Contractor's proposal.

Replacement Personnel. If the RFP Documents contain the names of specific people who will do the Work, then the quality and professional credentials of those people were material factors in the State's decision to enter into this Contract. Therefore, the Contractor must use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor may not remove those people from the Work without the prior written consent of the State, except as provided below.

The Contractor may remove a person listed in the RFP Documents from the Work, if doing so is necessary for legal or disciplinary reasons. However, the Contractor must make a reasonable effort to give the State 30 calendar days' prior, written notice of the removal.

If the Contractor removes a person listed in the RFP Documents from the Work for any reason other than those specified above, the State may assess liquidated damages in the amount of $1,500.00 for every day between the date on which the individual was removed and the date that this Contract is terminated or the individual's qualified replacement, selected in accordance with the process identified in this section, starts performing on the Work. The State also may provide the Contractor with written notice of its default under this section, which the Contractor must cure within 30 days. Should the Contractor fail to cure its default within the 30 day cure period, this Contract will terminate immediately for cause, and the State will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset these damages from any Fees due under this Contract.

The Contractor must have qualified replacement people available to replace any people listed in the RFP Documents by name or identified as a key individual on the Work. When the removal of a listed person is permitted under this Section, or if a person becomes unavailable, the Contractor must submit the resumes for two replacement people to the State for each person removed or who otherwise becomes unavailable. The Contractor must submit the two resumes, along with such other information as the State may reasonably request, within five business days after the decision to remove a person is made or the unavailability of a listed person becomes known to the Contractor.

The State will select one of the two proposed replacements or will reject both of them within ten business days after the Contractor has submitted the proposed replacements to the State. The State may reject the proposed replacements for any legal reason. Should the State reject both replacement candidates due to their failure to meet the minimum qualifications identified in the RFP Documents, or should the Contractor fail to provide the notice required under this Section or fail to provide two qualified replacement candidates for each removed or unavailable person, the Contractor will be in default and the cure period for default specified elsewhere in this Contract will not apply. In any such case, the State will have the following options:

(a) The State may assess liquidated damages in the amount of $1,500.00 for every day between the date on which the Contractor failed to provide the applicable notice, failed to provide the two replacement candidates, or the date the State rejected all candidates for cause and the date on which the Contractor affects a cure or the Contract expires without renewal or is terminated.
(b) The State may terminate this Contract immediately for cause and without any cure period.

Should the State exercise its option under item (a) above, it nevertheless will be entitled anytime thereafter to exercise its option under item (b) above. Additionally, should the State terminate this Contract under this provision, it will be entitled to damages in accordance with the Suspension and Termination Section of this Contract due to the termination. Should the State assess liquidated damages or otherwise be entitled to damages under this provision, it may offset these damages from any Fees due under this Contract.

The State may determine that the proposed replacement candidates meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the effort of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this Contract. Therefore, the State will have the right to reject any candidate that the State determines may provide it with diminished value.

Should the State reject both proposed candidates for any legal reason other than their failure to meet the minimum qualifications identified in the RFP Documents, the State may terminate this Contract for its convenience.

The State has an interest in providing a healthy and safe environment for its employees and guests at its facilities. The State also has an interest in ensuring that its operations are carried out in an efficient, professional, legal, and secure manner. Therefore, the State will have the right to require the Contractor to remove any individual involved in the Work, if the State determines that any such individual has or may interfere with the State's interests identified above. In such a case, the request for removal will be treated as a case in which an individual providing services under this Contract has become unavailable, and the Contractor must follow the procedures identified above for replacing unavailable people. This provision also applies to people that the Contractor's subcontractors engage, if they are listed by name or as a key person in the RFP Documents.

Suspension and Termination. The State may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. The State also may terminate this Contract if the Contractor violates any law or regulation in doing the Work, or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In any such case, the termination will be for cause, and the State's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 30 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice, or if the breach is not one that is curable, the State will have the right to terminate this Contract immediately on notice to the Contractor. The State also may terminate this Contract in the case of breaches that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the State may terminate this Contract on written notice to the Contractor without a cure period if the Contractor again fails to meet any obligation. The three notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 calendar days or for no cure period at all, and those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Work. If a third party is providing funding for the Work, the State also may terminate this Contract should that third party fail to release any funds for the Work. The RFP Documents normally identify any third party source of funds for the Work, but an absence of such in the RFP Documents will not diminish the State’s rights under this section.

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor must immediately cease all activity on the Work and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor also must immediately prepare a report and deliver it to the State. The report must be all-inclusive and must detail the work completed at the date of termination, the percentage of the Work's completion, any costs incurred in doing the Work to that date, and any Deliverables completed or partially completed but not delivered to the State at the time of termination. The Contractor also must deliver all the completed and partially completed Deliverables to the State with its report. However, if the State determines that delivery in that manner would not be in its interest, then the State will designate a suitable alternative form of delivery, which the Contractor must honor.

If the State terminates this Contract for cause, it will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as the State and the covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for the Work to the extent that such costs, when combined with payments already made to the Contractor for the Work before termination, exceed the costs that the State would have incurred under this Contract. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Work that the Contractor has performed 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 once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount that the State determines it owes to the Contractor. The State will make that determination based on the lesser of the percentage of the Work completed or the hours of work performed in relation to the estimated total hours required to perform the entire Work.

The State will have the option of suspending rather than terminating the Work, if the State believes that doing so would better serve its interests. In the event of a suspension for the convenience of the State, the Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Work rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the State reinstates the Work after suspension for cause, rather than terminating this Contract after the suspension, 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. Any amount due for work before or after the suspension for cause will be offset by any damage to the State from the default or other event giving rise to the suspension.

In the case of a suspension for the State's convenience, the State will calculate the amount of compensation due to the Contractor for work performed before the suspension in the same manner as provided in this section for termination for the State's convenience. The Contractor will not be entitled to compensation for any other costs associated with a suspension for the State's convenience, and the State will make no payment under this provision to the Contractor until the Contractor submits a proper invoice. If the State decides to allow the Work to continue rather than terminating this Contract after the suspension, the State will not be required to make any payment to the Contractor other than those payments specified in this Contract and in accordance with the payment schedule specified in this Contract for properly completed Work.

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will prepare a report concerning the Work just as is required by this Section in the case of termination. After suspension of the Work, the Contractor may not perform any Work without the consent of the State and may resume the Work only on written notice from the State to do so. In any case of suspension, the State retains its right to terminate this Contract rather than to continue the suspension or resume the Work. If the suspension is for the convenience of the State, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

The State may not suspend the Work for its convenience more than twice during the term of this Contract, and any suspension for the State's convenience may not continue for more than 30 calendar days. If the Contractor does not receive notice to resume or terminate the Work within the 30-day suspension, then this Contract will terminate automatically for the State's convenience at the end of the 30 calendar day period.

Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and must indemnify the State for any liability to them. Notwithstanding the foregoing, each subcontractor must hold the State harmless for any damage caused to them from a suspension or termination. They must look solely to the Contractor for any compensation to which they may be entitled.

Representatives. The State's representative under this Contract will be the person identified in the RFP Documents or in a subsequent notice to the Contractor as the "Work Representative." The Work Representative will review all reports the Contractor makes in the performance of the Work, will conduct all liaison with the Contractor, and will accept or reject the Deliverables and the completed Work. The

Work Representative may delegate his or her responsibilities for individual aspects of the Work to one or more managers, who may act as the Work Representative for those individual portions of the Work.

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

Either party, upon written notice to the other party, may designate another representative. However, the Contractor may not replace the Work Manager without the approval of the State if that person is identified in the RFP Documents by name or as a key individual on the Work.

Work Responsibilities. The State will be responsible for providing only those things, if any, expressly identified in the RFP Documents. If the State has agreed to provide facilities or equipment, the Contractor, by signing this Contract, warrants that the Contractor has either inspected the facilities and equipment or has voluntarily waived an inspection and will use with the equipment and facilities on an "as is" basis.

The Contractor must assume the lead in the areas of management, design, and development of the Work. The Contractor must coordinate the successful execution of the Work and direct all Work activities on a day-to-day basis, with the advice and consent of the Work Representative. The Contractor will be responsible for all communications regarding the progress of the Work and will discuss with the Work Representative any issues, recommendations, and decisions related to the Work.

If any part of the Work requires installation on the State's property, the State will provide the Contractor with reasonable access to the installation site for the installation and any site preparation that is needed. After the installation is complete, the Contractor must complete an installation letter and secure the signature of the Work Representative certifying that installation is complete and the Work, or applicable portion of it, is operational. The letter must describe the nature, date, and location of the installation, as well as the date the Work Representative certified the installation as complete and operational.

Unless otherwise provided in the RFP Documents, the Contractor is solely responsible for obtaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or federal agency for the Work and maintaining them throughout the duration of this Contract.

Changes. The State may make reasonable changes within the general scope of the Work. The State will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"). Additionally, if the State provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Work, the Contractor may request a Change Order from the State. The parties will handle such changes as follows: The Contractor will provide pricing to the State. The State will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

If a change causes an increase in the cost of, or the time required for, the performance of the Work, the Contractor must notify the State in writing and request an equitable adjustment in its Fee, the delivery schedule, or both before the Contractor signs the Change Order. If the Contractor claims an adjustment under this section in connection with a change to the Work not described in a written Change Order, the Contractor must notify the State in writing of the claim within five business days after the Contractor is notified of the change and before work on the change begins. Otherwise, the Contractor will have waived the claim. In no event will the State be responsible for any increase in the Fee or revision in any delivery schedule unless the State expressly ordered the relevant change in writing and the Contractor has complied with the requirements of this section. Provided the State has complied with the procedure for

Change Orders in this section, nothing in this clause will excuse the Contractor from proceeding with performance of the Work, as changed.

Where an equitable adjustment to the Contractor's Fee is appropriate, the State and the Contractor may agree upon such an adjustment. If the State and the Contractor are unable to agree, either party may submit the dispute to the senior management of the Contractor and the senior management of the State's Department of Administrative Services for resolution. If within 30 calendar days following referral to senior management, the claim or dispute has not been resolved, the Contractor must submit its actual costs for materials needed for the change (or estimated amount if the precise amount of materials cannot be determined) and an estimate of the hours of labor required to do the work under the Change Order. The Contractor must break down the hours of labor by employee position, and provide the actual hourly pay rate for each employee involved in the change. The total amount of the equitable adjustment for the Change Order then will be made based on the actual cost of materials (or estimated materials) and actual rate for each person doing the labor (based on the estimated hours of work required to do the change). Labor rates will be increased by 25% to cover benefits and taxes. The equitable adjustment for the Change Order then will be set based on this amount, plus 15% to cover overhead and profit. This amount will be the not-to-exceed amount of the Change Order. If the change involves removing a requirement from the Work or replacing one part of the Work with the change, the State will get a credit for the work no longer required under the original scope of the Work. The credit will be calculated in the same manner as the Contractor's Fee for the change, and the not-to-exceed amount will be reduced by this credit.

The Contractor is responsible for coordinating changes with its subcontractors and adjusting their compensation and performance schedule. The State will not pay any subcontractor for the Change Order. If a subcontractor will perform any work under a Change Order, that work must be included in the Contractor's not-to-exceed amount and calculated in the same manner as the Contractor's equitable adjustment for the portion of the work the Contractor will perform. The Contractor will not receive an overhead percentage for any work a subcontractor will do under a Change Order.

If the RFP Documents provide for the retainage of a portion of the Contractor's Fee, all equitable adjustments for Change Orders also will be subject to the same retainage, which the State will pay only on completion and acceptance of the Work, as provided in the RFP Documents.

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 of 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 is taking 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 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 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 and the like). The Contractor may not commit, and is not authorized to commit, the State in any manner. The Contractor's subcontractors will be considered the agents of the Contractor for purposes of this Contract.

Publicity. The Contractor may not advertise or publicize 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.

PART THREE: OWNERSHIP AND HANDLING OF INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

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 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 interest 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 do the Work. 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 do the Work. The Contractor will be liable for the disclosure of such information, whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.

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 must cause all of its Personnel who have access to any Confidential Information to 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.

System Security. The Contractor must prevent unauthorized access to the Electronic Construction Bidding Service Provider System. The Contractor must apply recognized industry standards to address system vulnerability to theft, mischief and efforts at tampering. Such security measures must be in compliance with the State's security policy and procedures published at http://das.ohio.gov/Divisions/InformationTechnology/StateofOhioITPolicies.aspx as determined by the State to be appropriate.

Handling the State's Data. The Contractor must use due diligence to ensure computer and telecommunications systems and services involved in storing, using, or transmitting State data are secure and to protect that data from unauthorized disclosure, modification, or destruction. The State's minimum standard is the NIST 800-53 moderate baseline. To accomplish this, the Contractor must:

(1) Apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Contract.

(2) Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.

(3) Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as and detect and respond to those threats and vulnerabilities.

(4) Maintain appropriate identification and authentication process for information systems and services associated with State data.

(5) Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with State data.

(6) Implement and manage security audit logging on information systems, including computers and network devices.

The Contractor must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold State data, limiting access to only these points, and disable all others. To do this, the Contractor must use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available. The Contractor must use two-factor authentication to limit access to systems that contain particularly sensitive State data, such as personally identifiable data.

Unless the State instructs the Contractor otherwise in writing, the Contractor must assume all State data is both confidential and critical for State operations, and the Contractor's security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Contractor's protection and control of access to and use of data, the Contractor must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access the State's data, as well as attacks on the Contractor's infrastructure associated with the State's data. Further, the Contractor must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with the State's data.
The Contractor must use appropriate measures to ensure that State's data is secure before transferring control of any systems or media on which State data is stored. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Contractor's obligations under this Contract.

The Contractor must have a business continuity plan in place. The Contractor must test and update the IT disaster recovery portion of its business continuity plan at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Contractor maintains the State's data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with the State's data in the case of a disaster or other business interruption. The Contractor's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to the State's data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Contractor also must provide for reviewing, testing, and adjusting the plan on an annual basis.

The Contractor may not allow the State's data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Contract properly and approved by the State's Chief Information Security Officer. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, the State's data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network. The Contractor also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

Any encryption requirement identified in this provision must meet the Ohio standard as defined in Ohio IT standard ITS-SEC-01, "Data Encryption and Cryptography".

The Contractor must have reporting requirements for lost or stolen portable computing devices authorized for use with State data and must report any loss or theft of such to the State in writing as quickly as reasonably possible. The Contractor also must maintain an incident response capability for all security breaches involving State data whether involving mobile devices or media or not. The Contractor must detail this capability in a written policy that defines procedures for how the Contractor will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access State data or the infrastructure associated with State data.

In case of an actual security breach that may have compromised State data, including but not loss or theft of devices or media, the Contractor must notify the State in writing of the breach, or the suspicion of a breach, no more than within 24 hours of the Contractor becoming aware of the breach, and fully cooperate with the State to mitigate the consequences of such a breach. This includes any use or disclosure of the State data that is inconsistent with the terms of this Contract and of which the Contractor becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Contract by an employee, agent, or subcontractor of the Contractor.

The Contractor must give the State full access to the details of the breach and assist the State in making any notifications to potentially affected people and organizations that the State deems are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the State on request. In addition to any other liability under this Contract related to the Contractor's improper disclosure of State data, and regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Such identity theft protection must be reasonably acceptable to the State.

All State Data will remain the property of the State. The Contractor must ensure that the State retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to others systems.

Return of State Data. The Contractor may use Confidential Information only as necessary for Contractor's performance under or pursuant to rights granted in this Contract and for no other purpose. The Contractor's limited right to use Confidential Information expires upon expiration or termination of this Contract for any reason. The Contractor's obligations of confidentiality and non-disclosure survive termination or expiration for any reason of this Contract.

Confidentiality Agreements. When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

Ownership of Deliverables. The State owns all Deliverables that the Contractor produces under this Contract, with all rights, title, and interest in all intellectual property that come into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. The Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated into any custom Deliverable ("Pre-existing Materials"), if the Contractor provides the non-exclusive license described in the next paragraph.

The Contractor may grant the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and distribute all Pre-existing Materials that are incorporated into any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The State may distribute such Pre-existing materials to third parties only to the extent required by governmental funding mandates. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials into a custom Deliverable, the Contractor must first disclose that desire to the State in writing and seek the State's approval for doing so in advance. The State will not be obligated to provide that approval, unless the Contractor disclosed its intention to do so in the RFP Documents. On the Contractor's request, the State will incorporate into any copies of a custom Deliverable any proprietary notice that the Contractor included with the original copy, if that notice is reasonably necessary to protect the Contractor's interest in any Pre-existing Materials contained in the custom Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

License in Commercial Material. As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense, is commercially available in the marketplace, subject to intellectual property rights, and readily copied through duplication on magnetic media, paper, or other media. Examples include written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in the RFP Documents or as an attachment referenced in

the RFP Documents, if that scope of license is different from the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material consists of trade secrets, then the State will treat the material as confidential. In this regard, the State will assume all obligations with respect to the Commercial Material that the Contractor assumes under the Confidentiality section of this Contract with respect to the State's Confidential Information. Otherwise, the State will have the same rights and duties permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor, whether or not the material is copyrighted when delivered to the State.

For Commercial Software, the State will have the rights in items (1) through (6) of this section with respect to the software. The State will not use any Commercial Software except as provided in the six items below or as expressly stated otherwise in this Contract. The Commercial Software may be:

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
2. Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
3. Reproduced for safekeeping (archives) or backup purposes;
4. Modified, adapted, or combined with other computer software, but the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions set forth in this Contract;
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
6. Used or copied for use in or transferred to a replacement computer.

Commercial Software delivered under this Contract is licensed to the State without disclosure restrictions unless it is clearly marked as confidential or secret. The State will treat any Commercial Software that is marked as confidential or secret as Confidential Information to the extent that such is actually the case.

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

General Warranties. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any material defects; and (2) unless otherwise provided in the RFP Documents, be the work solely of the Contractor. The Contractor also warrants that: (1) no Deliverable will infringe on the intellectual property rights of any third party; and (2) the Contractor's work and the Deliverables resulting from that work will be merchantable and fit for the particular purposes described in the RFP Documents.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the State; (5) the Contractor has the right and ability to grant the license granted in any

Deliverable in which title does not pass to the State; and (6) the Contractor is not subject to any unresolved findings of the Auditor of State under Revised Code Section 9.24 and will not become subject to an unresolved finding that prevents the extension or renewal of this Contract.

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

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

Indemnity for Property Damage and Bodily Injury. The Contractor must indemnify the State for all liability and expense 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, its employees, agents, or 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, other contractors, or 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 $250,000. 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

Standards of Performance and Acceptance. There will be a period for performance testing of the completed Project. During the performance period, the State, with the assistance of the Contractor, will perform acceptance testing. The performance period will last up to 90 calendar days, during which time the Project must meet the standard of performance required by the RFP Documents for 30 consecutive calendar days. The performance criteria in the RFP Documents will be supplemented with the relevant user manuals, technical materials, and related writings, to the extent that the specifications in those writings supplement and refine rather than contradict the performance criteria in the RFP Documents. Acceptance of the Project depends on a successful completion of the performance period defined in this section and the RFP Documents. This section applies to the Project, and any part of it, as well as replacements or substitutes for the Project after completion of a successful performance period.

If the Project does not meet the standard of performance during the initial performance period, the State will give the Contractor details about the problems in a timely manner and in a useful and relevant form. Until the Contractor demonstrably corrects all outstanding problems, the second performance period will not start, and the State will not accept the Project (or part thereof). The second performance test will

continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days or until the 90-day performance period has ended without meeting the standard of performance.

If the Project fails to meet the standard of performance after 90 calendar days from the start of the second performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies the State may have under this Contract, the State may request a correction or replacement of the relevant portion of the Project.

The Project may have components that can be tested for acceptance individually. If that is so, there may be acceptance criteria listed on the RFP Documents for each part of the Project that will be independently tested and accepted. However, unless the RFP Documents expressly provide otherwise, the failure of any independently tested component to meet its acceptance criteria will give the State the right to reject the entire Project. Alternatively, if the State determines that it is in the State's interest to reject only the part of the Project that was independently and unsuccessfully tested, it may do so. If the State chooses this option, the State will be entitled to a refund or credit toward the Contractor's Fee equal to the cost of acquiring a replacement for the rejected component.

The acceptable level of performance for the Project will be 98.5%, unless otherwise specified in the RFP Documents. The performance level for the Project is computed by dividing the sum of the uptime by the number of working hours during the test time. “Uptime” means the total hours, rounded to the nearest quarter hour, during which all components of the Project are operational and all functions of the Project are available to its users. The number of “working hours” means the total number of working hours for the period during which the Project was scheduled to be available to its users. Uptime and downtime will be measured in hours and quarter hours.

The Project “downtime” is that period when any part of the Project is inoperable due to failure of the Project or a particular Deliverable to operate according to the specifications in the RFP Documents, the user documentation, or the published technical specifications. During a period of downtime, the State may use operable components of the Project when that will not interfere with repair of inoperable components of the Project. Downtime will start from the time the State notifies the Project Manager of the inoperable condition of the Project until the Project is returned in proper operating condition.

The Project will not be accepted until the performance period is complete.

Should it be necessary, the State may delay the start of the performance period, but the delay will not exceed 30 consecutive calendar days after the scheduled date for implementation of the Project. Such a delay will not be considered a suspension of work under the Suspension and Termination section of this Contract.

Passage of Title. Title to any Deliverable will pass to the State only on acceptance of the Deliverable. 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 agreements, whether oral or written.

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 any time 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 may 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 completion of the Work and the time for meeting any final payment of compensation, except where such creates an absurdity.

Time. Unless otherwise expressly provided, any reference in this document to a number of days for an action or event to occur means calendar days, and any reference to a time of the day, such as 5:00 p.m., is a reference to the local time in Columbus, Ohio.

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 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.

Conflict of Interest. No Contractor or the personnel of the Contractor shall act in any manner that conflict with the Contractor's responsibilities under this Contract. Such prohibited actions shall include, but are not limited to the following:

1. Voluntarily acquiring any personal interest that conflicts with the Contractor's responsibilities under the Contract;
2. Knowingly permit any Ohio public official or public who has any responsibility in any manner related to this Contract, acquire any interest or any entity under the Contractor's control.

The Contractor, upon obtaining knowledge that any person described above has acquired an impermissible or conflicting personal interest related to this Contract, shall do the following in a forthwith manner:

1. Disclose such information to the State; and
2. Take immediate steps to ensure that the person does not participate in any action affecting the work under this Contract, unless the State determines that in light of the expeditious disclosure, such person's participation is not contrary to the public interest.

Ethics. All Contractors who are actively doing business with the State or who are seeking to do business with the State are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09.

Ohio Elections Law. The Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in O.R.C. Section 3517.13 are in full compliance with O.R.C. Section 3517.13.

If the Contractor accepts a Contract and/or purchase order issued under the Contract without proper certification, the Department of Administrative Services shall deem the Contractor in breach and 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.

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

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. During the Project, the Contractor must not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status ("Protected Status"). The Contractor must ensure that applicants for employment and employees are treated without regard to their Protected Status.

The Contractor must post notices with the provisions of this section in conspicuous places that are available to employees and applicants and must state in all solicitations and advertisements for employees that it is an equal opportunity employer.

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.

Declaration of Material Assistance/Non-Assistance to a Terrorist Organization. The Contractor represents and warrants that is has not provided any material assistance, as that term is defined in ORC Section 2909.33(C), to an organization that is identified by, and included on, the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the DMA form. The Contractor further represents and warrants that it has provided or shall provide the DMA form through the Ohio Business Gateway at http://business.ohio.gov/efiling/ prior to execution of this Contract. If these representations and warranties are found to be false, this Contract shall be void and the Contractor shall immediately repay to the State any funds paid under this Contract.

Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K). The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

The Contractor agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form which is incorporated and becomes a part of this Agreement.

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.

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 FIVE
SAMPLE CONTRACT

A CONTRACT BETWEEN
THE DEPARTMENT OF ADMINISTRATIVE SERVICES
ON BEHALF OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES
AND

_____
(CONTRACTOR)

THIS CONTRACT, which results from RFP 0A1098, entitled Electronic Construction Bidding Service, is between the State of Ohio, through the Department of Administrative Services (DAS), on behalf of the Ohio Facilities Construction Commission (OFCC), and _____ (the "Contractor").

This Contract consists of the referenced RFP, including all its attachments and supplements, written amendments to the RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It also includes any materials incorporated by reference in the above documents and any purchase orders and Change Orders issued under the Contract. The form of the Contract is this one page document, which incorporates by reference all the documents identified above. The General Terms and Conditions for the Contract are contained in an attachment to the RFP. If there are conflicting provisions among the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This document;
2. The RFP, as amended;
3. The documents and materials incorporated by reference in the RFP;
4. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, Change Orders and 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.

This Contract has an effective date of the later of _____, 20___, or the occurrence of all conditions precedent specified in the General Terms and Conditions.

TO SHOW THEIR AGREEMENT, the parties have executed this Contract as of the dates below.

CONTRACTOR	STATE OF OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES
SAMPLE – DO NOT FILL OUT	
_____	_____
By:	By: Robert Blair
Title: _____	Title: DAS DIRECTOR
Date: _____	Date: _____

SAMPLE

ATTACHMENT SIX
SAMPLE DELIVERABLE/MILESTONE SUBMITTAL FORM

Client Name:	**[Insert Client Name]**
Work Name:	**[Insert Work Name]**
Contract Number:	**[Insert Contract Number]**
Deliverable To Be Reviewed or Milestone Attained:	**[Insert Deliverable/Milestone Name and Work Breakdown Structure Task #]**
Date Deliverable Submitted for Review or Milestone Achievement Date:	**[Insert Applicable Date]**

The **[insert Deliverable/milestone name]** Deliverable/milestone is complete. This Deliverable/milestone has been completed/attained by **[insert Contractor name]** in accordance with the requirements specified in the RFP and Work Plan. Please obtain signatures below indicating the compliance of **[insert Deliverable/milestone name]**. Please obtain all signatures within **XX** calendar days of the Submitted or Achievement Date, above, **[insert date XX calendar days from submitted date]**.

Please contact_____ at **XXX-XXX** with any questions.

Sincerely,

[Insert Company Name]
[Insert Project Name]

_____
Printed Name
Contractor Work Manager
{Same as person signing above}

COMPLIANT:
Deliverable Payment Authorized: Yes _____ No _____ N/A _____

_____
Signature of State Work Representative/Date

NOT COMPLIANT:
Describe reason(s) for non-compliance:
(Continue on back if necessary)

_____
Signature of State Work Representative/ Date Payment <u>Not</u> Authorized

ATTACHMENT SEVEN
OFFEROR CERTIFICATION FORM

1. The offeror is not currently subject to an "unresolved" finding for recovery under Revised Code Section 9.24, and the offeror will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this RFP.

2. The offeror certifies that it will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment Two or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment Two without express written authorization from the State.

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

Yes/No	Description
	The offeror has had a contract terminated for default or cause.
	The offeror 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 offeror was the subject of any governmental action limiting the right of the offeror 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 offeror, any officer of the offeror, or any owner of a 20% interest or greater in the offeror 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 offeror, any officer of the offeror, or any owner with a 20% interest or greater in the offeror 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 offeror must provide complete details about the matter. While an affirmative answer to any of these items will not automatically disqualify an offeror 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 Proposal. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the offeror's performance under the Contract, and the best interest of the State.

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

Potential Conflicts (by person or entity affected)

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

The State may reject a Proposal 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 offeror did not disclose in its Proposal.

ATTACHMENT SEVEN
OFFEROR CERTIFICATION FORM - continued

5. The offeror certifies that all its and its subcontractors' personnel provided for the Work will have a valid I-9 form on file with the offeror or subcontractor, as appropriate, and will have presented valid employment authorization documents, if they are not United States citizens.

6. The offeror certifies that its regular, fulltime employees will perform at least 50% of the work on the Work.

7. The following is a complete list of all subcontractors, if any, that the offeror will use on the Work, if the State selects the offeror to do the work:

_____ _____

_____ _____

_____ _____

_____ _____

The offeror certifies that it has obtained and submitted a subcontractor letter, as required by Attachment Three, for each subcontractor it plans to use on the Work.

Please provide the following information for a contact person who has authority to answer questions regarding the offeror's Proposal:

Name:	
Title:	
Mailing Address:	
Office Phone Number:	
Cell Phone Number:	
Fax Number:	
Email Address:	

_____
Signature

_____
Name

_____
Title

_____
Company Name

_____
Company D-U-N-S Number

ATTACHMENT EIGHT
OFFEROR PROFILE SUMMARY

OFFEROR MANDATORY REQUIREMENTS

Note: The offeror may duplicate this form as necessary to demonstrate the requirement.

MANDATORY REQUIREMENT The offeror's must demonstrate that their proposed Electronic Construction Bidding service is currently used by at least one federal, state, or local government entity that has conducted a minimum of 100 construction bidding events with a total value of $100 million over the past two years.

<table>
<tr><td>Government Entity Name:</td><td colspan="2">Contact Name:
(Indicate Primary or Alternate)

Contact Title:</td></tr>
<tr><td>Government Entity Address:</td><td colspan="2">Contact Phone Number:

Contact Email Address:</td></tr>
<tr><td>Work / Project Name:</td><td>Beginning Date of Experience (month/year):</td><td>Ending Date of Experience (month/year):</td></tr>
<tr><td colspan="3">List Related Service Provided:

Describe how the Related Service shows the offeror's experience, capability, and capacity to develop the Deliverables or to achieve the milestones for this Work / Project:</td></tr>
</table>

ATTACHMENT NINE
STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

   _____ _____
   (Address) (City, State, Zip)

   Name/Principal location of business of subcontractor(s):

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

   _____ _____
   (Address) (City, State, Zip)

   Name/Location where services will be performed by subcontractor(s):

   _____ _____
   (Name) (Address, City, State, Zip)

   _____ _____
   (Name) (Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

   _____ _____
   (Address) (Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

_____	_____
(Name)	(Address, City, State, Zip)
_____	_____
(Name)	(Address, City, State, Zip)
_____	_____
(Name)	(Address, City, State, Zip)
_____	_____
(Name)	(Address, City, State, Zip)
_____	_____
(Name)	(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

ATTACHMENT TEN - COST SUMMARY
ELECTRONIC CONSTRUCTION BIDDING SERVICE

Basic Fee Schedule
Describe all elements of your basic fee structure in the table below. Describe what the fees cover and when they are applied.

Service Fee Schedule	Fee Amount
Fees Charged to Prospective Bidders	
Fees Charged to Bidders to Submit a Bid	
Fees Charged to the Project Owner or Project Team	
Fees Charged to the State of Ohio	

System Enhancements
For any requirements item in Supplement One where the Contractor indicated the functionality could be "Met with Enhancements" the Contractor must provide the implementation date.

System Enhancements		
Provide the requirement number (101 – 215), describe the proposed System Enhancement and the implementation date for the System Enhancement.		
Requirement number	**Describe the proposed System Enhancement**	**Implementation Date**

ATTACHMENT TEN - COST SUMMARY
ELECTRONIC CONSTRUCTION BIDDING SERVICE - continued

FOR EVALUATION PURPOSES ONLY

Electronic Construction Bidding Service Estimated Cost of Service

For evaluation purposes, the State will compare cost proposals by preparing an Estimated Cost of Service based on the following assumptions and the fee schedule proposed above (A. Basic Fee Schedule). This form must be completed entirely with all calculations displayed.

Note that these assumptions do not constitute a commitment by the State to provide a minimum volume of projects to the Contractor. The actual volume of contracts which are bid using the Contractor's Electronic Construction Bidding Service will be determined by the funding provided by future legislatures and the contracting methods selected by the project owners.

- 150 Bid Openings
- 200 Contracts Awarded
- Average Contract Value $1,200,000
- Range of Contract Values is $50,000 to $40,000,000
- 600 Vendors submit bids on one or more contracts
- 150 Vendors submit a bid on only one contract

Service Fee Schedule	Fee Amount
Fees Charged to Prospective Bidders	
Fees Charged to Bidders to Submit a Bid	
Fees Charged to the Project Owner or Project Team	
Fees Charged to the State of Ohio	
Total Cost for Evaluation	

ATTACHMENT ELEVEN – SPECIAL TERMS AND CONDITIONS

1. General Information

1. SUBSCRIBING ENTITIES

A "Subscribing Entity" means State agencies, boards, and commissions that place requests ("Orders") under this Contract for Services. And it includes other entities of the State that place Orders under this Contract.

2. RELATIONSHIP OF THE PARTIES AND SUBSCRIBING ENTITIES

The Parties are independent contractors and nothing herein creates or implies an agency relationship, joint venture, or partnership between the Parties. The Contractor and its officers, employees, contractors, and subcontractors who may attend meetings and work in other situations where their independent contractor status is not obvious to third parties must identify themselves as such to avoid creating an impression that they are State representatives. In addition, neither the Contractor nor its officers, employees, contractors, or subcontractors may make any representation that they are acting, speaking, representing, or otherwise advocating any position, agreement, service, or otherwise on behalf of the State or any Subscribing Entity, as defined in the next section.

3. SUBSCRIBING ENTITIES' RELIANCE ON THE CONTRACT

Subscribing Entities may rely on this Contract. Whenever a Subscribing Entity relies on this Contract to issue an Order, the Subscribing Entity will step into the shoes of the State under this Contract for purposes of its Order. This Contract will be between the Contractor and that Subscribing Entity. The Contractor must look exclusively to that Subscribing Entity for performance, including but not limited to payment, and must hold the State harmless with regard to such Orders and the Subscribing Entity's performance. But the State, through DAS, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an Order from any Subscribing Entity.

4. THIRD-PARTY SUPPLIERS

The Contractor must incorporate the costs of any third-party supplies and services in the Contractor's fees identified under this Contract.

The Contractor's use of other suppliers does not mean that the State will pay for them. The Contractor will be solely responsible for payment of its suppliers and any claims of those suppliers for any failure of the Contractor to meet its obligations under this Contract in the required manner. The Contractor will hold the State harmless and indemnify the State against any such claims.

The Contractor assumes responsibility for all services provided under this Contract whether it or one of its suppliers provides them in whole or in part. Further, the Contractor will be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Agreement and all service requests.

5. NON-EXCLUSIVITY

This Agreement is non-exclusive and is not a requirements contract. Nothing herein prevents either Party from entering into similar agreements with other entities.

6. CONFLICT RESOLUTION

If a Party is noncompliant with any term or condition of this Agreement or if a dispute arises under this Agreement ("Dispute"), the Party raising the Dispute may provide to the other Party written notice referencing this section and specifying the nature of the Dispute (the "Dispute Notification"). The Parties then will seek to resolve the Dispute in accordance with the procedures in this Section.

All Disputes will be submitted first to the State's e and the Contractor's Account Manager (or equivalent) for resolution. For 15 days from the date of receipt of the Dispute Notification ("Dispute Date"), the State OFCC Chief of Information Technology and Contractor's Account Manager (or equivalent) will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the Dispute in good faith.

If after the 15 days identified above, the State's OFCC Chief of Information Technology and the Contractor's Account Manager are unable to resolve the Dispute, the Parties will then submit the Dispute to the OFCC Director and to the Contractor's Sales Director (or equivalent) for resolution. For the next 15 days, the OFCC Director and Contractor's Sales Director will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the Dispute in good faith.

If following the 15 days in the previous section, the OFCC Director and the Contractor's Sales Director are unable to resolve the Dispute, the Parties will then submit the Dispute to the State's Chief Information Officer and to the Contractor's Vice President of Sales (or equivalent executive) for resolution. For the next 15 days, the State's Chief Information Officer and Contractor's Vice President will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the Dispute in good faith. If the State's Chief Information Officer and Contractor's Vice President are unable to resolve the Dispute within that time, the Parties will nevertheless continue to retain their rights to initiate formal proceedings hereunder.

The specific format for such discussions will be left to the discretion of the representatives of the State and Contractor responsible for attempting to resolve the Dispute, but each Party will involve the business and legal resources reasonably necessary to attempt in good faith to resolve the Dispute at the earliest possible time and without undue delay.

If the Parties are unable to resolve the Dispute and the dispute involves a claim of Contractor's noncompliance or overcharges, the State may withhold payment for any Services that are the subject of the Dispute. The State may withhold payment until the Contractor cures the noncompliance, the Parties arrive at an agreement to resolve the Dispute, or a Party obtains a resolution in a court of competent jurisdiction.

Nothing in this Section is intended to limit the rights provided under Section 6 or be a prerequisite to exercising those rights.

Once the Dispute has been resolved, any payments withheld will be handled in the following manner:

> If the resolution was in favor of the State or one or more Subscribing Entities, the Contractor will issue a credit on the next invoice for the affected Subscribing Entities. If the credit exceeds the service charges on the next invoice, the Contractor will issue payment in the form of a check in the amount exceeding the service charges.
>
> If in favor of the Contractor, the Subscribing Entity(s) will submit appropriate payment within 30 days of receiving notification of the resolution at the office designated to receive the invoice.

In either of the above cases, the amount or amounts withheld by the State or Subscribing Entity(s) with will be taken into account in calculating any amount(s) due.

2. General Requirements

1. STANDARDS

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of the State's enrolled users in the event of failure at any one of the Contractor's locations, with effective contingency planning (including back-up and disaster recovery capabilities) and 24 x 7 trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry standards. They also must meet the Service Level Agreements ("SLAs") provided in the Agreement and be support with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Contractor must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance.

The Services also must provide security controls that meet the security standards for moderate impact systems, as described in NIST SP 800-53, and offer a customizable and extendable capability based on open-standards APIs that enable integration with third party applications.

The Contractor has and will continue to use its best efforts through quality assurance procedures to ensure that there are no viruses or malware or undocumented features in its infrastructure and Services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the Subscribing Entities.

2. OBJECT REASSIGNMENT

Any Service subscriptions that are provided by the number of items that it may be used by or in conjunction with it, such as nodes, users, or connections ("Objects"), may be reassigned to other, similar Objects within the State at any time and without any additional fee or charge. For example, a named user subscription may be assigned to another user. But any such reassignment must be in conjunction with termination of use by or with the previous Object, if such termination is required to keep the total number of licensed Objects within the scope of the applicable subscription. Should the State require a special code, a unique key, or similar item to reassign the subscription as contemplated by this section, the Contractor will provide such a code, key, or similar item to the State at any time and without a fee or charge. A later section in this Agreement governs assignment of the State's subscription to any Service to a successor in interest.

3. GENERATED FILES

"Generated Files" are files the State creates using the Contractor's Services and in which the data or other information belonging to or provided by the State ("State Data") or results from the State's instructions are stored. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a programming language that the Contractor provided to the State also would be considered Generated Files. As between the State and the Contractor, the State will own all Generated Files that the State prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Contractor or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Contractor grants to the State a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the State creates

while using the Services in the manner in which the Services are designed to be used. In the State's distribution of the Generated Files, the State may not use the Contractor's name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of a Service when used as intended.

4. CONTRACTOR *WARRANTIES*

THE CONTRACTOR WARRANTS THAT (I) IT HAS VALIDLY ENTERED INTO THIS CONTRACT AND HAS THE LEGAL POWER TO DO SO, (II) THE SERVICES WILL PERFORM MATERIALLY IN ACCORDANCE WITH THE APPLICABLE USER GUIDE AND THE REQUIREMENTS OF THIS AGREEMENT, (III) SUBJECT TO ANY LIMITATIONS SPECIFIED IN THE CONTRACT, THE FUNCTIONALITY OF THE SERVICES WILL NOT BE MATERIALLY DECREASED DURING A SUBSCRIPTION TERM, AND (IV) IT WILL NOT TRANSMIT MALICIOUS CODE TO STATE, PROVIDED IT IS NOT A BREACH OF THIS SUBPART (IV) IF STATE OR A STATE USER UPLOADS A FILE CONTAINING MALICIOUS CODE INTO THE SERVICES AND LATER DOWNLOADS THAT FILE CONTAINING MALICIOUS CODE. FOR ANY BREACH OF A WARRANTY ABOVE, STATE'S AND INDIVIDUAL SUBSCRIBING ENTITIES' REMEDIES WILL BE AS PROVIDED IN THE SECTION OF THIS AGREEMENT DEALING WITH TERMINATION.

Failure of the Contractor to meet any SLAs with a Subscribing Entity will not be considered a breach of this warranty section unless the State reasonably determines that the failure is persistent or extended in duration.

5. STATE RESPONSIBILITIES

The State will (i) be responsible for its compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of its data and of the means by which it acquired that data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify the Contractor promptly of any unauthorized access or use of which it becomes aware, and (iv) use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, and applicable laws and government regulations. (a) sell, resell, rent or lease the Services, (b) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (c) intentionally use the Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs ("Malicious Code"), (d) intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3. Orders, Requesting Service, Deliver, Acceptance, Termination, and Modification

1. ACCEPTANCE

The acceptance procedure for set up or installation of the Services will be a review by the Subscribing Entity acquiring the Service to ensure that it meets the performance standards and other requirements in the Agreement and, if ordering documents ("Order Forms") are authorized, the applicable Order Form and that the installation has been done in a professional manner. For other Services, the acceptance procedure will be a review by the Subscribing Entity to ensure the Service complies with the performance requirements in the Agreement. The Subscribing Entity will have up to 15 days after the installation or the establishment of the Service to do this. The Subscribing Entity will not issue a formal letter of acceptance, and passage of 15 days will imply acceptance, though the Subscribing Entity will issue a notice of noncompliance if set up or installation or other Service does not meet the requirements in this Agreement.

If the Subscribing Entity issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Subscribing Entity has issued a noncompliance letter, the

Service, installation, or set up will not be accepted until that Subscribing Entity 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 Subscribing Entity will issue the acceptance letter within 15 days after all defects have been fixed. If the Contractor fails to correct the defect(s), the applicable Order(s) will terminate without cost or obligation to the Subscribing Entity.

4. Termination – Agreement, Orders

1. TERMINATION BY THE STATE

The Contractor must comply with all terms and conditions of this Agreement. If the Contractor fails to perform any one of its obligations under this Agreement, it will be in default, and the State may proceed in the following manner:

1. The State may terminate this Agreement or the affected Order(s) under this Agreement;

2. The State may withhold payment for any affected Service until the Contractor cures the noncompliance or the Parties arrive at an agreement as to the corrective action for the noncompliance; or

3. The State may file a complaint for damages with a court of competent jurisdiction in Ohio.

2. TERMINATION OF ORDERS BY SUBSCRIBING ENTITY OR CONTRACTOR

1. BY A SUBSCRIBING ENTITY

A Subscribing Entity may terminate Service under any Order it has placed, and it may do so at any time for any or no reason. The Subscribing Entity will be liable for charges accrued but unpaid as of the termination date.

If the Subscribing Entity's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly or other governmental body, and the General Assembly or other governmental body fails at any time to continue funding for the payments and other obligations due under an Order, the Subscribing Entity's obligations with respect to that Order will terminated as of the date the funding expires, and the Subscribing Entity will have no further obligation with respect to such Order.

If a termination of any Service under one or more Orders is for cause or non-appropriation of funds, the Subscribing Entity will not be liable for any charges.

2. BY THE CONTRACTOR

If a Subscribing Entity materially defaults in the performance of any of its duties or obligations under this Agreement, the Contractor, by giving at least 30 days prior written notice, may cancel any affected Services provided to that Subscribing Entity under this Agreement.

If the Subscribing Entity cures the default to the satisfaction of the Contractor and before the cancellation of Service date, the Order will remain in full force and effect.

The Subscribing Entity will remain liable for charges accrued but unpaid as of the cancellation.

5. Financial – Fees, Claims and Disputes, Billing, and Payment

1. FEES

All applicable charges are fully documented in the Agreement. The Subscribing Entity will not be responsible for any charges not documented in the Agreement nor will the Subscribing Entity be responsible for any charges waived by the Contractor in this Agreement.

Subscribing Entities are not subject to increases in fees during the term of this Agreement.

Subscribing Entities are not responsible for any charges from the Contractor's third-party suppliers for any Services ordered under this Agreement. In this regard, the Contractor is the seller or reseller of all Services covered by this Agreement, and any payments due to the Contractor's third-party suppliers for Services under this Agreement are included in the Contractor's.

2. BILLING

Invoices will be issued at the account level, but the Subscribing Entity may require a recap at the agency, division, or district level based on the organizational structure of the Subscribing Entity.

Invoices must be submitted to the office designated in the purchase order as the "bill to address". The invoice must be submitted within 60 days of the Service. If the Subscribing Entity does not receive the invoice within the 60 days of the date of Service, the Subscribing Entity will be entitled to deny payment of the invoice.

A proper invoice must include the following information and/or attached documentation:

1. Name and address of the Contractor as designated in this Agreement;
2. Federal Tax Identification Number of the Contractor as designated in this Agreement;
3. Invoice remittance address as designated in the Agreement; and
4. A sufficient enough description of the Services that allows the Subscribing Entity to identify the Services and perform an audit of the Services.

3. PAYMENT

Payments for Services under this Agreement will be due on the 30th calendar day after the actual receipt of a proper invoice in the office designated to receive the invoice.
The Contractor agrees to receive payment from approved vouchers by electronic fund transfer ("EFT") for Subscribing Entities that rely on them to make payment. The Contractor will cooperate with Subscribing Entities in providing the necessary information to implement EFT. The date the EFT is issued in payment will be considered the date payment is made, or if a Subscribing Entity does not use an EFT process, the date its check or warrant is issued in payment will be considered the date payment is made.

4. STATE REPORTING REQUIREMENTS

The Contractor must provide the State with a recap of all Services provided to the Subscribing Entities on a monthly basis.

5. SERVICE LEVEL GUARANTEE AND CREDITS

The Contractor will issue a credit allowance to any Subscribing Entity affected by a Service outage. The credit will appear on the affected Subscribing Entity's next invoice.

6. AUDITS AND REPORTS

During the term of this Agreement and for three years after its termination, on reasonable notice and during customary business hours, the State may audit the Contractor 's records and other materials that relate to the Services and to the pricing representations that the Contractor has made to acquire this Agreement. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Order hereunder.

The Contractor must make such records and materials available to the State within 15 days after receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation, overcharge to the State, or violation of the terms of this Agreement, the State will be entitled to recover its damages, including the cost of the audit.

The State also may require various reports from the Contractor related to the Services. Further, the State will be entitled to any other reports that the Contractor makes generally available to its other customers without additional charge. The State's rights under this section will apply to all Services provided to all Subscribing Entities under this Agreement, but a Subscribing Entity's rights to reports will apply solely to Services it orders or receives under this Agreement.

6. Support

1. SERVICE SUPPORT GENERALLY

During the term of any Order, the Contractor will provide the State with telephonic assistance and advice for using all Services covered by the Order. The Contractor also will provide troubleshooting and problem resolution by developing and providing fixes or patches for errors in any software it provides and contract with any third party providing software that supports the Services for the same. As part of the support the Contractor provides in exchange for the applicable fee, the Contractor also will keep all software current by installing all relevant service packs and patches as well as all updates and new releases and versions of the software as soon as reasonably possible. The Contractor also will keep its own software offering compatible with any updated third-party software that is part of the Services or supports the Services. The manner in which the Contractor provides support will be governed by the Contractor's policies and programs described in the applicable documentation or other materials that the Service Provider uses to notify its customers generally of such policies. But regardless of the Contractor's policies and programs, in all cases such support must comply with the requirements of this Agreement. And the Contractor must provide the support in a competent, professional, and timely manner.

2. EQUIPMENT SUPPORT GENERALLY

For any equipment used to provide the Services, remedial equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Agreement for default, except that the Contractor will only have eight hours to remedy a default. Nothing contained herein will limit the application of any credits for failure to meet any service level agreements. The Contractor will provide adequate staff to provide the maintenance required by this Agreement.

3. MINIMUM AVAILABILITY

Support for any Service and the Service itself offered under this Agreement must be available for a minimum of five years from the start date of an Order. Thereafter, for so long as the Contractor makes the Service and the support available to other customers, the State will be entitled to participate in that Service and the support under the terms of this Agreement and in exchange for the applicable fee(s) identified in the applicable Service.

4. REDUCTIONS

The State may acquire subscriptions that are based on the number of users, nodes, computers, processors, or other counts of objects covered by an Order ("Objects"). In any such cases, the State may request that the fees for a subscription renewal be calculated based on fewer Objects than included in the previous Order, with an appropriate adjustment in the applicable fee(s). Despite the reduction, fees for the remaining objects may not be increased over the applicable fees from the previous Order.

5. SUPPORT PARAMETERS

The State may initiate support requests for problems it encounters with the Software by telephone, email, Internet, or fax, and the Contractor must maintain lines of communication that support all four forms of communication. The Contractor must make support available 24 hours a day, seven days per week (the "Support Window"), and it must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Contractor must maintain at least one support center in North America with adequate English-speaking support personnel. The State's technical staff may contact any support center that the Contractor maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.

6. INCIDENT CLASSIFICATION

The Contractor must classify and respond to support calls by the underlying problem's effect on the State. In this regard, the Contractor may classify the underlying problem as critical, urgent, or routine. The guidelines for determining the severity of a problem and the appropriate classification of and response to it are described below.

The Contractor must designate a problem as "critical" if the Service is functionally inoperable, the problem prevents the Service or a major component or function of it from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as "urgent" if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts the State's use of the Service in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Service to freeze, locks up the computer on which the Service is running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that the State still can conduct business with the Service and response times are consistent with the needs of the State for that type of Service. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a support call as "routine" if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict the State's use of the Service in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with the State's use of the Service, the problem may be treated as routine.

The Contractor must apply the above classifications in good faith to each call for support, and the Contractor must give due consideration to any request by the State to reclassify a problem, taking

into account the State's unique business and technical environments and any special needs it may have.

7. INCIDENT RESPONSE

The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution. The Contractor must assign support or development personnel at the appropriate level to the problem, and those personnel must prepare a work plan for the problem's expeditious resolution. The work plan must assume that the Contractor's appropriate staff will work without material interruption until the problem is resolved properly. The Contractor's personnel must maintain daily contact with the State's technical staff to keep the State abreast of efforts being made to solve the problem. The Contractor also must provide the State's technical staff with direct access to the Contractor's support personnel and product development personnel, if appropriate, who are assigned to the problem.

The Contractor must respond to urgent problems by having its product development and support personnel work in concert to develop a fix or a workaround. The Contractor's support personnel must maintain regular contact with the State to keep its technical staff abreast of progress toward a resolution of the problem. The Contractor's support staff must include the problem in regular status reports to the Contractor's management team. And the Contractor's support staff must provide the fix or workaround procedure as soon as it is available.

The Contractor must respond to routine problems by providing the State with a fix or workaround on a priority basis if the problem is one for which an existing patch or workaround already exists. For newly identified problems falling into this classification, the Contractor's support personnel must generate a problem report, and the appropriate development or support personnel then must prioritize the problem in relation to other outstanding product issues. The assigned priority then will govern the problem solving or developmental work needed to address the problem and the schedule for delivering a solution. For routine calls that involve end usage and configuration issues rather than bugs or other technical problems, the Contractor's first or second level support personnel must provide the State's technical staff with telephonic assistance on a non-priority basis.

8. RESPONSE TIMES

The maximum time that the Contractor takes to respond initially to a support request may vary based upon the classification of the request. During the Support Window, the Contractor's response time for a critical support request will be less than one hour. The Contractor's response time for an urgent request must be less than two hours during the Support Window. And the Contractor's response time for a routine support request must be less than four hours during the Support Window.

9. ESCALATION PROCESS

Any support call that is not resolved must be escalated to the Contractor's management under the following parameters. Unresolved problems that are classified as critical must be escalated to the Contractor's support manager within four hours and to the director level after one day. If a critical problem is not resolved within three days, it must escalate to the corporate officer level and then to the CEO level after five days. The Contractor's support staff will escalate unresolved urgent problems to its support manager within three days, to the director level after seven days, and to the corporate officer level after 14 days.

10. STATE OBLIGATIONS

To facilitate the Contractor meeting its support obligations, the State must provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. It also must assist the Contractor as reasonably necessary for the Contractor's support personnel to isolate and diagnose the source of the problem. Additionally, to assist the Contractor's tracking of support calls and the resolution of support issues, the State must make a reasonable effort to use any ticket or incident number that the Contractor assigns to a particular incident in each communication with the Contractor.