

INVITATION TO BID

ITB NUMBER: ACQ1041
DATE ISSUED: October 6, 2020

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

Cisco SmartNet Maintenance

INQUIRY PERIOD BEGINS: October 6, 2020
INQUIRY PERIOD ENDS: October 12, 2020 8:00 a.m.
OPENING DATE: October 19, 2020
OPENING TIME: 1:00 P.M.
**OPENING LOCATION: Department of Administrative Services
General Services Division
4200 Surface Road
Columbus, Ohio 43228**

This ITB consists of five parts and eight attachments, totaling 34 consecutively numbered pages. Please verify that you have a complete copy.

PART ONE: EXECUTIVE SUMMARY

Purpose. This is an Invitation to Bid (“ITB”) under Sections 125.07 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Rule 123:5-1-07 of the Ohio Administrative Code (the “Administrative Code”). The State of Ohio (the “State”), through the Department of Administrative Services, is soliciting bids (“Bids”) for providing Cisco SmartNet Maintenance for the hardware and software specified in Attachment Seven of this ITB. The specific requirements for this ITB are included in Attachment One, Requirements and Special Provisions, attached to this ITB and incorporated herein by reference.

ITB Process. If a participating vendor (“Bidder”) submits a suitable Bid in response to this ITB, the State may enter into a contract (the “Contract”) to have the selected Bidder (the “Contractor”) provide all or part of the Cisco SmartNet Maintenance set forth in this ITB. This ITB provides details on what is required to submit a Bid, how the State will evaluate the Bids, and what will be required of the Contractor under the Contract.

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

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

Background. Currently, the State purchases Cisco SmartNet Maintenance through a State Term Schedule. To introduce competition to the process and increase the number of potential vendors, the State is seeking to procure Cisco SmartNet Maintenance through an ITB process. Bidders must submit their Bid by providing unit price(s) for all applicable items, as requested.

Objectives. The State has the following objective for this ITB, and it is the Bidder’s obligation to ensure that the Bidder’s response meets this objective.

The State’s objective is to procure Cisco SmartNet Maintenance from a Certified Gold Cisco Partner. The State requires the authorized reseller to provide the following products and services:

- Cisco SmartNet Maintenance for all listed items on the Cost Summary Form;
- Access to Technical Assistance Center (TAC); and
- Online self-help resources to resolve technical issues.

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

Dates:

Firm Dates

ITB Issued:	October 6, 2020
Inquiry Period Begins:	October 6, 2020
Inquiry Period Ends:	October 12, 2020 @ 8:00 a.m.
Bid Due Date:	October 19, 2020 @ 1:00 p.m.

Estimated Dates

Contract Award:	October 26, 2020
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Delivery Date:

On or before November 2, 2020

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

PART TWO: STRUCTURE OF THIS ITB

Organization. This ITB is organized into five parts and eight attachments. The parts and attachments are listed below. All documents listed below are a part of and incorporated into this ITB.

Parts:

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

Attachments:

Attachment One	Requirements and Special Provisions
Attachment Two	Requirements for Bids
Attachment Three	General Terms and Conditions
Attachment Four	Sample Contract
Attachment Five	Bidder Certification
Attachment Six	Buy Ohio and Buy American Certification
Attachment Seven	Cost Summary
Attachment Eight	Standard Affirmation and Disclosure Form

PART THREE: GENERAL INSTRUCTIONS

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

Contacts. The following person will serve as the Procurement Representative for the State during the ITB process:

Mike Eshelman
Department of Administrative Services
Enterprise IT Contracting
4200 Surface Rd.
Columbus, Ohio 43228

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

Requirements and Special Provisions: Attachment One provides specific requirements the State will use to evaluate the Bids, including any mandatory requirements.

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

- Access this procurement via the State's Procurement Website and on the right, select "**Bid Opportunities Search**";
- In the "**Document/Bid Number**" field, enter the ITB number **ACQ1041** of this ITB;
- Select "**Invitation to Bid**" from the Opportunity Type dropdown;
- Click the "Search" button;
- On the Opportunity Search Results page, click on the hyperlinked Bid Number;
- On the Opportunity Details 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 Bidder's representative (the Bidder Representative) who is responsible for the inquiry;
 - Name of the prospective Bidder;
 - The Bidder Representative's business phone number; and
 - The Bidder Representative's email address.
- Type the inquiry in the space provided including:
 - A reference to the relevant part of this ITB;
 - The heading for the provision under question; and
 - The page number of the ITB where the provision can be found.
- Enter the Confirmation Number at the bottom of the page; and
- Click the "Submit" button.

A Bidder submitting an inquiry will receive an email acknowledging receipt. The prospective Bidder will not receive a personalized response to the question nor notification when the State has answered the question.

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

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

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

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

Bidders may view amendments by using the search function of the State's Procurement Webpage detailed above, and then clicking on the amendment number listed on the Bid Opportunity page to display the amendment.

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

Bid Submittal. Each Bidder must submit two (2) completed, sealed, and signed copies of its Bid in an opaque package. The Bidder must clearly mark the exterior of the package "**Cisco SmartNet Maintenance Bid – ACQ1041**" on the outside.

Included in each sealed package, the Bidder must include an electronic "searchable" copy of everything contained within the package on a flash drive (portable storage device) in Microsoft Office (native format), Microsoft Word (native format), Microsoft Project (native format), Microsoft Excel (native format) and Adobe Acrobat format, as appropriate (digital copy of the Cost Summary Page must be in Microsoft Excel format). If there is a discrepancy between the hard copy and the electronic copy of the Bid, the hard copy will control, and the State will base its evaluation of the Bid on the hard copy.

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

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

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

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

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

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

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

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

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

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

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

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

PART FOUR: BID EVALUATION

Bid Opening. The State will open the Bids on the Bid Due Date at 1:00 p.m. The State will open the Bids in the presence of a representative of the Ohio Auditor of State. After the opening, the Procurement Representative will begin the initial review of the Bids.

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

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

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

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

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

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

Determination of Lowest Bid. For the State to determine that a Bid is the lowest Bid, the State must determine that the Bid comes from a responsible Bidder, the Bid is responsive to the requirements of this ITB, and the Bid offers the lowest-cost in comparison to all other responsive Bids from responsible Bidders. The State will make this determination without regard to any discounts or incentives and only after application of any preferences, as further described below.

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

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

Determination of Responsiveness. After the determination of the lowest Bid, the State will evaluate the lowest Bid to determine whether it is responsive. A Bid is responsive if it responds to the ITB's specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the Bid, give the Bidder an unfair competitive advantage, or affect the value the State will receive from the award.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subcontracting. The State does not permit subcontracting for this Contract. However, if it becomes necessary in the future for the Bidder to use a subcontractor to perform a portion of the work to be done under the Contract, the Bidder must be the primary contractor for the overall effort. The Bidder must identify its subcontractors, suppliers, and joint ventures for performance of the Contract. The Bidder must supplement its list of subcontractors, suppliers, or joint ventures if the Bidder's subcontractors, suppliers, or joint ventures change during the term of this Contract. The Bidder may not use any subcontractor that has been the subject of any government action to limit the subcontractor's right to do business with that government in the last seven years. The Bidder must provide a written explanation with its Bid if the Bidder's subcontractor cannot so certify. Further, the Bidder must obtain each subcontractor's agreement in writing to be bound to all the terms, conditions, and specifications of the Contract. The State may deny use of any subcontractor if the State determines that the Bidder will not be the primary Contractor who will perform the work under the Contract.

PART FIVE: AWARD OF THE CONTRACT

Contract Award. The State plans to award the Contract based on the schedule in the ITB, if the State decides the procurement is in its best interests and has not changed the award date. Unless otherwise stated in this ITB, the State may award the Contract by item or as a whole.

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

Contract. A sample contract is included in Attachment Four. The State will issue an original Contract to the Contractor upon award of this ITB. The Contractor will sign and return the original Contract as instructed by the State. The Contract will bind the State only when the State's duly-authorized representative signs all copies of the Contract and returns one to the Contractor, the State issues a purchase order, and all other prerequisites identified in the Contract have occurred.

If this ITB results in an award, the Contract will consist of the one-page Contract in its final form together with the documents listed in the one-page Contract, including this ITB with all attachments and exhibits, written amendments to this ITB, the Contractor's accepted Bid, and written, authorized amendments to the Contractor's Bid. It also will include any materials incorporated by reference in the above documents under the Contract. The general terms and conditions for the Contract are contained in Attachment Three to this ITB and incorporated herein by reference. 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;
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Bid, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Bid, to the extent they are not inconsistent with any of the foregoing.

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

The term of the Contract will be from August 1, 2020 until the Contractor's performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or July 31, 2021, whichever is sooner. The State may renew this Contract for one (1) additional biennium, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in the new biennium. The maximum duration through all renewals will be from award date until July 31, 2023. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

ATTACHMENT ONE: REQUIREMENTS AND SPECIAL PROVISIONS

This attachment describes the Bid requirements and what the Contractor must do to perform under the Contract. It also provides performance and delivery dates, as applicable.

Requirements. The Contractor must meet all of the ITB's requirements, including the following:

- Bidder must be a Certified Gold Cisco partner.
- Bidder must provide Cisco SmartNet maintenance for the specified hardware and software used by the State of Ohio as outlined in Attachment Seven.

Contract Start Date. August 1, 2020

Quantities. Bidders must offer only the specified items based on the Cost Summary Form contained in Attachment Seven of this ITB and incorporated herein by reference. The total order quantity is supplied on the Cost Summary Form, Attachment Seven. Additional hardware added during the term of the Contract will be at the same annual rate as the hardware listed on the Cost Summary Page. Additionally, for any serial number on the Cost Summary Page that is no longer in service, the pro-rated support cost will be applied as a credit towards the following year. Any remaining credits at the end of the term of the contract will be refunded to the State.

Any hardware that has an End of Support Date prior to August 1, 2020 should have an annual price of \$0.00. Pricing should only be provided up to the contract term end date listed. These are items that are still in use but outside of support and are provided for reference purposes only.

Reimbursable Expenses. None.

Bill to Address.

To be more efficient in our payment processing time, all billing/invoicing must be submitted to one of two payment options below; please do not submit to both.

Mail:

Ohio Shared Services
PO Box 182880
Columbus, OH 43218-2880

-Or-

E-mail:

invoices@ohio.gov

To avoid payment delays, please ensure the Purchase Order number (which will be provided upon contract award) is included on all invoice(s). For purchase from Cooperative Purchasing Partners, the purchaser will provide a billing address at time of order.

Location of Data. None.

ATTACHMENT TWO: REQUIREMENTS FOR BIDS

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

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

Each Bid must contain the following:

- Cover letter
- Supplier Information Form (OBM-5657)
- Bidder Certification Form (Attachment Five)
 - Certified Gold Cisco Partner Company Name and Address as listed on Cisco's Cisco Partner list at <https://locatr.cloudapps.cisco.com/WWChannels/LOCATR/openBasicSearch.do>
- Proof of Insurance
- Affirmative Action
- References
- Certification (Buy American, Buy Ohio, Veteran Preference) (Attachment Six)
- Cost Summary (Attachment Seven)
- Standard Affirmation and Disclosure Form (Attachment Eight)

All originally signed documents must be included in the same Bid binder, and the Bidder must indicate on the outside of the binder which Bid contains the originally signed documents. Additional copies of the Bid may contain copies of these documents.

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

Supplier Registration. The State of Ohio has changed the way suppliers register to do business with the State. To provide suppliers with an enhanced registration experience, a new website dedicated to new and existing suppliers is now available. To register to do business in Ohio and to access supplier forms, click here <http://www.supplier.obm.ohio.gov/>. Offerors must provide evidence that they are registered with the Ohio Shared Services to do business in the State of Ohio by providing their supplier ID number.

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

Certified Gold Cisco Partner Verification. Bidder must include their Certified Gold Cisco Partner Company Name and Address as listed on Cisco's Cisco Partner list at: <https://locatr.cloudapps.cisco.com/WWChannels/LOCATR/openBasicSearch.do> showing they are an authorized reseller in good standing.

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

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

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

Certification (Buy American, Buy Ohio, Veteran Preference). The Bidder must complete and submit the Certification contained in Attachment Six to this ITB and incorporated by reference.

Cost Summary. This ITB includes a Cost Summary Form (Attachment Seven). The Cost Summary Form is located separately on the Procurement website with the documents associated with the ITB. Bidders may not reformat this form. Each Bidder must complete the Cost Summary Form in the exact format provided, and the State may reject any Bid with a reformatted Cost Summary Form.

Bidders must offer only the specified items based on the Cost Summary Form contained in Attachment Seven of this ITB. **BIDDERS MUST NOT MAKE ANY CHANGES TO QUANTITIES, PRODUCT #'s, LICENSES, ETC. CHANGES MADE TO THE COST SUMMARY WILL RESULT IN DISQUALIFICATION.**

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

The Bidder's total cost for the Cisco SmartNet maintenance must be represented as the total price.

The Cisco SmartNet Maintenance coverage included in this Contract has a start date of August 1, 2020. Cisco will provide coverage for the gap period between August 1, 2020 and the beginning of the work under this ITB, and billing for this period will be handled through the selected Contractor once the Contract is awarded. This gap period billing should be included in the quote for Year One Pricing.

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

Affirmation and Disclosure Form. The Bidder must complete and submit the Affirmation and Disclosure Form attached to this ITB as Attachment Eight.

ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS

PART ONE: PERFORMANCE AND PAYMENT

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

Payment. In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the ITB Documents (the "Cost") for any maintenance actually ordered by issuance of a valid State purchase order, plus any other expenses identified as reimbursable in the ITB Documents. But in no event will payments under this Contract exceed the "single unit cost" amount in the ITB Documents without the prior, written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance under this Contract. Payment of the Fee also is contingent on the Contractor delivering a proper invoice and any other documents this Contract requires. An invoice must comply with the State's then current policies regarding invoices and their submission. The State will notify the Contractor in writing within 15 business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect. If the invoice properly reflects payment due to the Contractor and complies with all the State's requirements for a proper invoice, the State will pay the Contractor within 30 days after the State receives the invoice.

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

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

If the State has already paid the Contractor on an invoice but later disputes the amount covered by the invoice, and if the Contractor fails to correct the problem within 30 calendar days after written notice, the Contractor must reimburse the State for that amount at the end of the 30 calendar days as a nonexclusive remedy for the State. On written request from the Contractor, the State will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to the State's facilities and any information the State has regarding the problem.

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

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

Ohio Payment Card. The State may use the Ohio Payment Card to purchase the Cisco SmartNet maintenance from this Contract. Such purchases may not exceed \$2,500 unless the Office of Budget & Management ("OBM") has

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

Right of Offset. The State may set off the amount of any Ohio tax liability, liquidated damages or other damages or claims for damages 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 maintenance, such will be the sole and exclusive responsibility of the Contractor. And the Contractor will pay such taxes, together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or a later time.

PART TWO: CONTRACT ADMINISTRATION

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 Project duplicates the work done or to be done under the other contracts.

Other Contractors. The State may hold other contracts for additional or related goods and services. The Contractor must fully cooperate with and coordinate its performance with all other contractors and State employees as may be

required for the smooth and efficient fulfillment of this Contract. The Contractor may not act in any way that may unreasonably interfere with the work of any other contractors or the State's employees.

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

Audits. During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice, and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Project. This audit right also applies to the State's duly authorized representatives and any person or organization providing financial support for the Project. State audit rights will apply to those Contractor materials that are required to verify the accuracy of a Contractor invoice to the State inclusive of: Contractor personnel timesheets; Contractor purchased or provided equipment for benefit of the State that will remain in the State's possession; State deliverable acceptance documentation; any required State written approvals as required herein; final Work products and deliverables; any partial or incomplete Work products or deliverables that should the Contractor submit for partial compensation from the State as a result of termination of this contract.

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

Right to Terminate as a Result of Audit Findings. In the event the State determines that the results of any examination of the Contractor is unsatisfactory per the requirements of the Contract and not remedied within a 30-day period following written notice from the State, the State may terminate this Agreement, in part or in full.

If the Contractor fails to satisfy the requirements of the State with regard to security of information, or if an examination reveals information that would result in a continuing contractual relationship that causes the State to be in violation of any law, the State may terminate this Contract immediately without notice.

Insurance. Contractor shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain, for the duration of the Contract, insurance for claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.

5. Cyber liability (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

The Insurance obligations under this Contract shall be the minimum Insurance coverage requirements and/or limits shown in this Contract. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this Contract are sufficient to cover the obligations of the Contractor under this Contract.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

Except for Workers' Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

Umbrella or Excess Insurance Policies

Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

Notice of Cancellation

Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Waiver of Subrogation

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage

Contractor shall furnish the State of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that State of Ohio is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

State of Ohio reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Contract Remedies.

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the default, for every day that the default is not cured by the Contractor.
3. **Deduction of Damages from Contract Price.** The State may withhold payment and deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor's compensation still due on the Contract.

Suspension/Termination. In the event of suspension or termination the State will issue a notice. Any notice of suspension or termination, in full or in part, will be effective as specified in the notice. The Contractor must immediately cease all work, refuse any additional orders, and take all steps necessary to minimize the costs the Contractor will incur related to this Contract as directed by the notice. Suspension, termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or limit the State's rights in such.

At the State's request, the Contractor must immediately prepare a final report and deliver such report to the State. The report must detail the work completed and/or the orders received and not processed prior to the time of notice. If applicable, the report must include the percentage of the Project's completion, estimated time for delivery of all orders received but not processed, any costs incurred by the Contractor in doing the Project to date, and any Deliverables completed or partially completed but not delivered to the State at the time of notice. Based on the State's approval of the final report and as directed, the Contractor must deliver work, whether completed or not, to the State. Any delivered work will be subject to approval by the State. The Contractor may be entitled to payment for any Deliverables that have been delivered and accepted at a pro-rated amount based on the compensation structure of this Contract.

1. Contract Suspension.

- a. **Suspension for Cause.** If the Contractor fails to perform any one of the Contractor's obligations under this Contract, the Contractor will be in default and the State may suspend rather than terminate this Contract. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.
- b. **Suspension for Convenience.** In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section I.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.

The notice of suspension whether, with or without cause, will be effective immediately, on the Contractor's receipt of the notice.

The State may not suspend the Work/Project 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/Project 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.

2. Contract Termination.

- a. **Termination for Convenience.** The State may terminate this Contract, or an Ordering Agency may terminate an Order, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated contract price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract had been fully performed. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.
- b. **Termination for Cause.** If the Contractor fails to perform any of its obligations under this Contract, the Contractor will be in default and the State may terminate this Contract in accordance with this Section. Termination for cause includes but is not limited to:
 - 1) **Termination for Persistent Default.** The State may terminate this Contract for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified the Contractor of its third default, the State may terminate this Contract without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.
 - 2) **Termination for Endangered Performance.** The State may terminate this Contract if the State determines that the performance of the Contract is endangered through no fault of the State.
 - 3) **Termination for Financial Instability.** The State may terminate this Contract if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the State finds other evidence of the Contractor's financial instability.
 - 4) **Termination for Delinquency, Violation of Law.** The State may terminate this Contract if the State determines that the Contractor is delinquent in its payment of federal, state or local obligations including but not limited to taxes, workers' compensation insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. The State also may terminate this Contract if the State determines that the Contractor has violated any law during the performance of this Contract.
 - 5) **Termination for Subcontractor Default.** The State may terminate this Contract for the default caused by the Contractor's subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.
 - 6) **Termination for Failure to Retain Certification, License, and Permits.** The State may immediately terminate the Contract if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications (Including CRP, MBE, EDGE and Veteran Friendly Business Enterprise certifications), and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.

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

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

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

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

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

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

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

Independent Contractor Acknowledgement. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in Revised Code. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have

any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf>.

Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in ORC Section 145.037.

PART THREE: PUBLICITY AND CONFIDENTIAL INFORMATION

Publicity. The Contractor shall not do the following without prior, written consent from the State:

1. Advertise or publicize that the Contractor is doing business with the State;
2. Use this Contract as a marketing or sales tool; or
3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.

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

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

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

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

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3)

in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

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

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

PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

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 ITB 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 ITB 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 and security for the State's data, systems, and networks; (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 Project 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 Project. 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.

Indemnity for Property Damage, Bodily Injury, and Data Breach. The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure/breach of State data including personally identifiable information and State sensitive information arising out of the performance of this Contract, provided that such bodily injury, property damage, or disclosure/breach 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, its other contractors, or its agents.

Limitation of Liability. Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the value of this Contract, provided such limitation does not impose an unlawful indemnification obligation upon the State. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify

the State against claims made against it, disclosure/breach of State data including personally identifiable information or State sensitive information, or for damages to the State caused by the Contractor's negligence or other tortious conduct.

PART FIVE: ACCEPTANCE

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

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

PART SIX: CONSTRUCTION

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

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

Amendments – Waiver. No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at 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 will not be used to interpret any section.

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

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

PART SEVEN: LAW AND COURTS

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

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

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

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

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

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

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

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>.

Prohibition of the Expenditure of Public Funds for Offshore Services. No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. 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 the Contract.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.

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

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

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

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

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

Registration with the Secretary of State. Contractor certifies that it is one of the following:

1. A company that is properly registered with the Ohio Secretary of State; or
2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
3. Exempt from registration requirements of the Ohio Secretary of State.

Boycotting: Pursuant to Revised Code 9.76(B), Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

ATTACHMENT FOUR: SAMPLE CONTRACT

**A CONTRACT BETWEEN
THE DEPARTMENT OF ADMINISTRATIVE SERVICES
AND**

(CONTRACTOR)

THIS CONTRACT, which results from ITB ACQ1041, titled Cisco SmartNet Maintenance, is between the State of Ohio, through the Department of Administrative Services, and _____(the "Contractor").

The Contract is the result of agreed upon changes to the ITB, its attachments and supplements, including any written amendments to the ITB, any materials incorporated by reference in the ITB, the Contractor's Bid, and written, authorized amendments and clarifications to the Contractor's Bid. It also includes any change orders issued under the Contract.

This Contract consists of:

1. This one-page Contract in its final form;
2. The attached, amended and clarified version of Contractor's Bid in response to ITB ACQ1041 dated _____ ("Contractor's Response"). Contractor's Response includes Attachment Three - General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response as accepted by the State;
3. The attached Cost Proposal Workbook dated _____.

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.

The term of the Contract will be from August 1, 2020 until the Contractor's performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or July 31, 2021, whichever is sooner. The State may renew this Contract for one (1) additional biennium, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in the new biennium. The maximum duration through all renewals will be from award date until July 31, 2023. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

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: [Matthew M. Damschroder](#)

Title: _____

Title: [DAS Director](#)

Date: _____

Date: _____

ATTACHMENT FIVE: BIDDER CERTIFICATION FORM

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

1. The Bid meets all the requirements of this ITB.
2. The Bidder has not taken any exception to the terms and conditions in this ITB, including Attachment Three.
3. The Bidder will comply with all federal and Ohio laws, rules, and regulations that are in force currently or anytime during the term of the Contract.
4. The Bidder is not now subject to an “unresolved” finding for recovery under Revised Code Section 9.24, and the Bidder will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this ITB.
5. The Bidder will be the prime Contractor if a Contract is awarded based on this Bid.
6. The Bidder will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment One or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment One without express written authorization from the State.
7. The Bidder affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.
8. This Bid is genuine and not a sham and Bidder has not colluded, conspired, or agreed, directly or indirectly, with anyone or any entity to limit competition under this ITB or to set or otherwise control the prices, products, or services offered to the State under this ITB.
9. The Bidder certifies its and each of its subcontractors’ principal places of business are located at the addresses identified in the Supplier Information Form(s) included with this Bid.
10. The Bidder certifies its responses to the following statements are true and accurate. The Bidder’s answers apply to the last seven years. Please indicate yes or no in each column.

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

If the answer to any item above is affirmative, the Bidder must provide complete details about the matter, in an attached page. While an affirmative answer to any of these items will not automatically disqualify a Bidder from

consideration, at the sole discretion of the State, such an answer and a review of the background details may result in a rejection of the Bid. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Bidder's performance under the Contract, and the best interests of the State.

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

Potential Conflicts (by person or entity affected)

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

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

- 12. The Bidder's personnel working on the Contract will have a valid I-9 form on file with the Bidder and will have presented valid employment authorization documents, if they are not United States citizens.
- 13. The Person signing below is an authorized representative of the Bidder and certifies to the truth and accuracy of the representations made above.
- 14. The Bidder certifies that they are an authorized reseller in good standing and have provided documentation from the appropriate Software application representative supporting this claim.

Signature

Name

Title

Company Name of Bidder

Company D-U-N-S Number

4. Border state bidder: mined products mined in respective border state (Except for products mined in Michigan)
 Yes No Not Applicable
-

C. VETERANS PREFERENCE (BUY VETERAN): Revised Code 9.318 and Administrative Code 123:5-1-16

Is the bidder a certified Veteran Friendly Business Enterprise as defined in Administrative Code 123:5-1-01(KK)
 Yes No

ATTACHMENT SEVEN: COST SUMMARY

Bidders responding to the ITB must submit a complete Cost Summary Form available on the Procurement website with the documents associated with the ITB. Any corrections or changes made to the figures in the UNIT or Cost columns of the Table must be initialed or the Bid will be disqualified.

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

(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: _____