

AMENDMENT #3 FOR RFP NUMBER 0A03010

DATE AMENDMENT ISSUED: December 23, 2002

The state of Ohio, through the Department of Administrative Services, Computer Services Division, for the [Public Utilities Commission of Ohio \(PUCO\)](#) is issuing this amendment for the Request for Proposals entitled:

[Ohio Commercial Vehicle Information Systems and Networks \(OCVISN\) Project](#)

DATE RFP ISSUED: [November 4, 2002](#)
OPENING DATE: January 16, 2003
OPENING TIME: 11:00 A.M.
OPENING LOCATION: Department of Administrative Services
Computer Services Division Bid Room
30 East Broad Street, 40th Floor
Columbus, Ohio 43215

The attached page(s) represent the Request for Proposals (RFP) amendment for the RFP listed above.

Specifications and requirements that have been revised are indicated with asterisks and/or bold type.

Equipment Warranty. If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for 1 year from the acceptance date of the Equipment that the Equipment will perform substantially in accordance with specifications described in the RFP, the user manuals, technical materials, and related writings published by the manufacturer for the Equipment. The foregoing warranties will not apply to Equipment that is modified or damaged after title passes to the State.

The Contractor will notify the State in writing immediately upon the discovery of any breach of the warranties given above.

The Contractor's will do the following if any Equipment does not meet the above warranties:

- (a) Cause the Equipment to perform as required, or, if that is not commercially practicable, then;
- (b) Grant the State an a refund equal to the amount the State paid for the Equipment or, if such has not been individually priced, the manufacturer's suggested retail price for the Equipment.

Except where the Contractor's breach of a warranty makes it not possible for the State to do so, the State will return the affected Equipment to the Contractor in the case of a refund under the previous paragraph.

General Exclusion of Warranties. THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT. THE CONTRACTOR ALSO MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS FOLLOWS: IF THE CONTRACTOR HAS BEEN ENGAGED UNDER THE SCOPE OF WORK IN THE RFP TO DESIGN SOMETHING TO MEET A PARTICULAR NEED FOR THE STATE, THEN THE CONTRACTOR DOES WARRANT THAT THE CONTRACTOR'S WORK WILL MEET THE STATED PURPOSE FOR THAT WORK.

Indemnity for Property Damage and Bodily Injury. The Contractor will indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death) and damage to property arising out of the performance of this Contract, providing such bodily injury or property damage is due to the fault of the Contractor, its employees, agents, or subcontractors and occurs without negligence on the part of the State or any of its employees.

***Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this Contract, the parties agree as follows:**

1. This limitation will not apply to liability arising from third-party claims or circumstances where this document expressly provides a right to damages such as actions for breach of warranty, confidentiality, infringement, or indemnification.
2. In no event will either party be liable for any indirect, incidental or consequential loss or damage of any kind, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibilities of such damages.
3. The Contractor further agrees that except with respect to judgments against one party resulting from the fault or breach of this Contract by the other party, the Contractor shall remain liable for all direct damages due to the Contractor's fault or negligence up to twice the value of the Contract regardless of the cause, theory, or basis for such liability.

PART FIVE: ACCEPTANCE AND MAINTENANCE

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

If the Project does not meet the standard of performance during the performance period, the State will give the Contractor details about the problems in a timely manner and in a useful and relevant form. Until the Contractor has demonstrably corrected all outstanding problems, the performance period will not restart and the Project (or part thereof) will not be accepted. The performance test will continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days.

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

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

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

The Project downtime is that period when any part of the Project is inoperable due to failure of the Project or a particular Deliverable to operate according to the specifications in the RFP, the user documentation, or the published technical specifications.

During a period of downtime, the State may use operable components of the Project when that will not interfere with repair of inoperable components of the Project.

Downtime will start from the time the State notifies the Project Manager of the inoperable condition of the Project until the Project is returned in proper operating condition.

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

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

Alternative form of Acceptance. If this Contract does not involve software or Equipment as a Deliverable, then the preceding section will not apply and there will be no formal acceptance procedure unless the RFP expressly provides otherwise. If the RFP does not provide otherwise, the acceptance procedure will be an informal review by the Project Representative to ensure that each Deliverable and the Project as a whole comply with the

requirements of this Contract. The Project Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable or the Project as a whole does not meet the requirements of this Contract. If the Project 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 Project Representative has issued a noncompliance letter, the Deliverables or the Project as a whole will not be accepted until the Project 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 Project Representative will issue the acceptance letter within 15 calendar days.

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

Passage of Title. Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State.

Software Maintenance. If this Contract involves software as a Deliverable, then, during the warranty period, the Contractor will correct any material programming errors that are attributable to the Contractor within a reasonable period of time. But the State must notify the Contractor, either orally or in writing, of a problem with the software and provide sufficient information for the Contractor to identify the problem.

The Contractor's response to a programming error will depend upon the severity of the problem. For programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrators to employ work-arounds to fully use the software, Contractor will respond to the request for resolution within 4 business hours. And the Contractor must begin working on a proper solution for the problem within 1 business day, dedicating the resources of at least 1 qualified programmer full-time to fixing the problem. For any defects with more significant consequences, including those that render key functions of the system inoperable or significantly slow processing of data, the Contractor will respond within 2 business hours of notice. Additionally, the Contractor must begin working on a proper solution for the problem immediately after responding and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For software classified as Commercial Software in the Ownership of the Work section and for which the State has not signed a separate license agreement, the Contractor will acquire the right to maintenance for 1 year. That maintenance will be the third-party licensor's standard maintenance program. But, at a minimum, that maintenance program must include all new releases, updates, patches, and fixes to the software. It will also include a commitment to keep the software current with the operating environment in which it is designed to function (and, if applicable, the subject matter covered by the software) and to correct material defects in the software in a timely fashion. Additionally, the Contractor will obtain a commitment from the licensor to make maintenance available for the product for at least 4 years after the first year of maintenance. The Contractor will also obtain a commitment from the licensor to limit increases in the annual fee for maintenance to no more than 10% annually. If the licensor is unable to provide maintenance during that 5 year period, then the licensor must be committed to doing 1 of the following 2 things: (a) give the State a *pro rata* refund of the license fee based on a 5-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat it as confidential and to be obligated to the requirements under the Confidentiality section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality section requires the Contractor to do in handling the State's Confidential Information.

Equipment Maintenance. If this Contract involves Equipment as a Deliverable, then, on delivery and for 12 months after acceptance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance will include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance will include the repair, replacement, or exchange deemed necessary to keep the Equipment to good working order. For purposes of this Contract, Equipment restored to

good working condition means Equipment that performs in accordance with the manufacturer's published specifications and the RFP.

The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract.

The following services are outside the scope of this Contract:

- a. Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.
- b. Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from casualty or the State's misuse of the Equipment, damage resulting from improper packing or failure to follow prescribed shipping instructions (if such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as described or included in the Contractor's Proposal, or causes other than ordinary use of the Equipment.
- c. Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices.
- d. Maintenance or any increase in maintenance time resulting from any maintenance or inappropriate connection to other equipment (not done by the Contractor) that results in damage to the Equipment.
- e. Activities required to restore the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying, or performing any maintenance service on the Equipment.

Equipment Maintenance Standards. This section applies if Equipment will be a Deliverable under this Contract.

Remedial Equipment maintenance by the Contractor will be completed within 8 business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed or substitute equipment provided within 8 hours after notification by the State, the Contractor will be in default.

All maintenance will also meet any standards contained in the RFP. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies specified elsewhere in the RFP for default, except that the Contractor will only have 8 hours to remedy a default.

The Contractor will provide adequate staff to provide the maintenance required by this Contract.

Equipment Maintenance Continuity. This section applies if Equipment will be a Deliverable under this Contract.

If the Contractor is unable to provide maintenance services to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default. The State then will be entitled to the remedies in the default section of this Contract. But the State will also be entitled to the following items from the Contractor: (a) all information necessary for the State to perform the maintenance, including logic diagrams, maintenance manuals and system and unit schematics, as modified by the Contractor; and (b) a listing of suppliers capable of supplying necessary spare parts.

Any information in items (a) and (b) above that is rightfully identified by the Contractor as proprietary information will be maintained in confidence by the State except where disclosure to a third party is necessary for the State to continue the maintenance. But any third party to whom disclosure is made will agree to hold such proprietary information in confidence and to make no further disclosure of it. Further, the State agrees that any such proprietary information will be used solely to perform the Contractor's maintenance obligations hereunder and will be returned to the Contractor upon completion of the such use.

Principal Period of Maintenance (General). This section applies if software or Equipment will be a Deliverable under this Contract.

Maintenance will be available 9 working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance fee during later annual maintenance periods.

Maintenance Access (General). This section applies if software or Equipment will be a Deliverable under this Contract.

The Contractor will keep the Project in good operating condition during the warranty period and any annual maintenance period during which the State contracts for continued maintenance, and the State will provide the Contractor with reasonable access to the Project to perform maintenance. All maintenance that requires the Project to be inoperable must be performed outside the State's customary working hours except when the Project is already inoperable. Preventive or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

Key Maintenance Personnel (General). This section applies if software or Equipment will be a Deliverable under this Contract.

The Contractor will identify all key people who will provide maintenance on the Project, furnish the State with a means of identifying these people, furnish the State with their credentials, and notify the State at least 30 calendar days in advance of any reductions in staffing levels of key people at the office serving the State.

PART SIX: CONSTRUCTION

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

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

Amendments – Waiver. No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms. Waivers must be in writing to be effective. And either party may at any later time demand strict performance.

Severability. If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

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

Headings. The headings used herein are for the sole sake of convenience and 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 completion of Project and the time for meeting any final payment of compensation, except where such creates an absurdity.

PART SEVEN: LAW & COURTS

Compliance with Law. The Contractor agrees to comply with all applicable Federal, state, and local laws in the conduct of the Work.

Drug-Free Workplace. The Contractor will comply with all applicable state and Federal laws regarding keeping a drug-free workplace. The Contractor will make a good faith effort to ensure that all the Contractor employees, 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. No Personnel of the Contractor may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor will not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Project 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 will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor will 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 the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

Ohio Ethics and Elections Law. The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, O.R.C. §102.04. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the 2 previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

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.

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.