

This Appendix includes Standard Terms and Conditions, Policies and Procedures and miscellaneous documents relative to the purchasing processes.

Terms and Conditions

- ◆ Standard Terms and Conditions for Invitations to Bid..... Rev. 10/1/2007
- ◆ Standard Terms & Conditions for Reverse Auction..... Rev. 10/1/2007

Policies & Procedures:

- ◆ PUR – 001 Ethics..... Rev. 2/16/2007
- ◆ PUR – 002 Fraud, Waste & Abuse..... Rev. 2/16/2007
- ◆ PUR – 003 Domestic & In-State Preference..... Rev. 2/16/2007
- ◆ PUR – 004 Hierarchy of Procurement Methodologies..... Rev. 2/16/2007
- ◆ PUR – 005 Contracting Method Determination..... Rev. 2/16/2007
- ◆ PUR – 006 Selecting Contracts for Set Aside..... Rev. 2/16/2007
- ◆ PUR – 007 Communications & Protests Procedures..... Rev. 10/22/2007
- ◆ PUR – 008 Exceptions to Terms and Conditions..... Rev. 2/16/2007
- ◆ PUR – 009 Contract Modifications..... Rev. 2/16/2007
- ◆ PUR – 010 Bid Modifications..... Rev. 2/16/2007
- ◆ PUR – 011 Delegated Signature Authority..... Rev. 2/16/2007
- ◆ PUR – 012 Bid & Performance Bonds..... Rev. 2/16/2007
- ◆ PUR – 013 Internal Counsel..... Rev. 2/16/2007
- ◆ PUR – 014 Professional Development..... Rev. 2/16/2007
- ◆ PUR – 015 Debarment Bid Modification to a Contract..... Rev. 2/16/2007

Miscellaneous:

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
INSTRUCTIONS, TERMS AND CONDITIONS FOR BIDDING**

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

I-2. When Bids may be Delivered. The Department of Administrative Services ("DAS") must receive bids no later than 1:00 p.m. the day the bids are scheduled for opening. Bids received after 1:00 p.m. on the scheduled date for opening will be considered as late and will not be opened. DAS receives bids during the hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, except state observed holidays. DAS does not accept bids with insufficient postage or collect on delivery.

I-3. Where Bids must be Delivered. Bids must be delivered to the following address:

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

I-4. How Bids May be Delivered. Each bid must be submitted in a sealed envelope or similar container with the bid number clearly marked on the exterior. If a bidder uses an express mail or courier service, the bid number must be clearly marked on the exterior of the express mail or courier service envelope or must be enclosed in a sealed envelope inside the express mail or courier service envelope with the bid number clearly marked on the inside envelope. A bid that is not properly and clearly marked and is inadvertently opened, before the scheduled bid opening time, may be disqualified without additional consideration.

I-5. Bids are a Public Record. Interested bidders may attend the opening of the bids. After bids are opened and certified by the Auditor of State, they are available for public review by interested parties who have registered with the bid desk to review the bids. Once bids have been reviewed, they will be forwarded to the contract analyst to begin the evaluation and award process. After bids are opened they are public records as defined in Ohio Revised Code 149.43 and are subject to all laws appurtenant thereto. Bidder may request that certain information, such as trade secrets or proprietary data, be designated as confidential and not considered as public records. Material so designated shall accompany the bid and be in a sealed container duly marked, and shall be readily separable from the bid in order to facilitate public inspection of non confidential portion. Prices, makes, models, catalog numbers of items offered, deliveries and terms of payment shall not be considered as confidential. The decision as to whether or not such trade secrets or proprietary data shall be

disclosed at the bid opening rests solely with the Department of Administrative Services.

I-6. Withdrawal of Bid before Bid Opening. A bidder may withdraw its bid, by written request, any time after DAS receives the bid and before bid opening.

I-7. Withdrawal of Bid after Bid Opening. A bidder may by written request withdraw its bid after bid opening, if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty. "Inadvertent" means inattentive or unobservant; heedless; due to oversight; unintentional. If DAS suspects that the lowest bid contains a mistake, DAS may ask the bidder for written confirmation of its bid.

I-8. Correction of Bid before Bid Opening. If a bidder withdraws its bid and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the bidder. The omission of a bidder's signature or initials to a modification may result in the bid being determined to be not responsive. Any corrections must be completed off the premises.

I-9. Correction after Bid Opening. DAS may permit a bidder alleging an inadvertent error to correct its bid, after opening, only if the mistake and the correction are clearly evident from the bid and correction does not affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

I-10. Bids are Firm for 90 Days. Unless stated otherwise, once opened all Bids are irrevocable for ninety (90) days. Beyond ninety (90) days, bidder will have the option to honor their Bid or make a written request to withdraw their Bid from consideration.

I-11. Bidder May Request Clarification. If a bidder discovers an inconsistency, error or omission in this Invitation to Bid, the bidder should request clarification from Procurement Services as indicated on the front page of the Invitation to Bid. Such clarification may be made only through the internet. Bidders should make their requests for clarification a minimum of five (5) working days before the date of bid opening unless otherwise noted on Page 1 of the ITB. No other form of clarification is acceptable. Failure of Bidder to comply may result in the Bidder being deemed not responsive.

I-12. Requests for Revisions or Additions to the Bid: Bidders are required to comply with all of the terms and conditions of the Invitation to Bid, whether the bidder had actual knowledge of the terms and conditions of the Invitation to Bid and regardless of any statement or omission in the bid that might indicate a bidder's contrary intention. DAS will not agree to any additional or inconsistent terms or conditions proposed by the bidder. The terms and conditions of the Invitation to Bid prevail over any inconsistent or additional terms or conditions of the bid proposed by the bidder.

I-13. DAS Modifications to the Bid. When it is necessary to modify an Invitation to Bid, DAS does so by written addendum only.

I-14. Rejected Bids. DAS may reject any bid, in whole or in part, if any of the following circumstances are true:

- (A) bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the Invitation to Bid,
- (B) the price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the purchasing agency's available funds, or
- (C) DAS determines that awarding any item is not in the best interest of the State of Ohio.

I-15. Bid Preparation. The State of Ohio assumes no responsibility for costs incurred by the bidder prior to the award of any Contract resulting from this Bid. Total liability of the State is limited to the terms and conditions of a resulting Contract.

I-16. Damages Arising from Bid Specifications. A bidder may not be compensated for damages arising from inaccurate or incomplete information in the Invitation to Bid specifications or from inaccurate assumptions based upon the specifications.

I-17. Evaluation of Bids. The contract will be awarded to the lowest responsive and responsible bidder as determined by DAS under the Ohio Revised Code (the "Code"). To protect the integrity of the competitive bid process, bids will be closed for public review once the evaluation and award process begins.

I-18. Unit Costs. Bidders shall not insert a unit cost of more than three (3) digits to the right of the decimal point. Digit(s) beyond three (3) will be dropped and not used in the evaluation of the Bid.

I-19. Lowest Bidder. A bidder is lowest if its bid offers the lowest-cost supply or service in comparison to all other bidders as set forth in the evaluation paragraph in the bid. While bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest bidder.

I-20. Responsive Bidder. A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

I-21. Responsible Bidder. DAS' determination of a bidder's responsibility includes the following factors:

- (a) experience of the bidder,
- (b) bidder's financial condition,
- (c) bidder's conduct and performance on previous contracts,
- (d) the bidder's facilities,
- (e) the bidder's management skills,
- (f) the bidder's ability to execute the contract properly, and
- (g) review of Federal and the Ohio Department of Transportation debarment list.

I-22. Estimated Usage. Unless otherwise stated, the usage indicated for each item(s) are to be considered as estimates only and should be considered as information relative to

potential purchases that may be made from the contract. The State makes no representation or guarantee as to the actual amount of item(s) to be purchased by the participating agencies.

I-23. Preference for Ohio Products. The bid award may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

I-24. Tie Bids. If two or more bidders offer the same cost and both are determined to be responsive and responsible, DAS may break the tie with the flip of a coin. DAS may assign "heads" and "tails" to the bidders. The coin flip may be conducted in the presence of the bidders, if they elect to be present, and is the final determination of the lowest, responsive and responsible bidder.

I-25. Information Requested: DAS may request additional information to evaluate a bidder's responsiveness to the Invitation to Bid or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely impact DAS' evaluation of the bidder's responsiveness or responsibility.

I-26. Samples: DAS may require bidders, by Invitation to Bid or by request during evaluation, to provide sample supplies or equipment or examples of work, at the bidder's expense. Samples must clearly identify the bidder, the bid number, and the item the sample represents in the bid. DAS will return samples that are not destroyed by testing, at the bidder's expense, upon the bidder's timely request. DAS may keep the samples of the bidder awarded the contract until the completion of the contract. Unsolicited samples submitted in response to this Invitation to Bid will not be evaluated and DAS may dispose of them in any way it chooses.

I-27. Suspension and Debarments. The Department of Administrative Services will not award a contract for goods or services, funded in whole or in part with Federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties Listing System <http://www.epls.gov/>.

I-28. Protests and Communications During Evaluation. Any bidder, who is not in agreement with the competitive bidding process used to make the award may file a protest. The protest must be timely and submitted in writing to the Procurement Services Administrator. Any attempt by the bidder, the bidder's agent(s), or any party representing the bidder to file a protest with any entity of the State of Ohio other than the Administrator may result in the bidder being deemed as not responsive. During the evaluation process, unless requested by Procurement Services as part of the evaluation process, any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder, to submit correspondence that is determined by DAS to be an attempt to compromise the impartiality of the evaluation or any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder to communicate with any member of the State regarding the evaluation process may be grounds for immediate disqualification of the bidder. A determination to stay the proceedings or reverse an award determination will be at the sole discretion of the Procurement Services Administrator. The decision of the Administrator shall be final and conclusive unless any person adversely affected by the decision commences an action in a court of law.

I-29. Registration with the Secretary of State. By the signature affixed to this Bid, the bidder attests that the Bidder is:

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

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

I-30. Certification Regarding Contract Eligibility With Other Governmental Entities: By the signature affixed on Page 1, Bidder hereby certifies that Bidder has not, within the last seven (7) years been the subject of any government action to limit the Bidder's right to do business with the government. If the Bidder cannot so certify, the Bidder must provide a written explanation with the bid response.

I-31. Non-Collusion Certification: By the signature affixed on Page one (1) of the Bid, the Bidder certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing bid; that such bid is genuine and not collusive or sham; that bidder has not colluded, conspired or agreed, directly or indirectly, with any bidder or person, to put in a sham bid; or colluded or conspired to have another not bid and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the bid price of its bid or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against any bidder or any person or persons interested in the proposed contract and that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted this bid, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

I-32. Specifications. The Department of Administrative Services is authorized to prepare specifications to obtain supplies and services. The purpose of the specification is to describe the supplies or services to be purchased and will serve as a basis for comparison of bid responses. The department may use any form of specification it determines to be in the best interest of the State and that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification, a performance specification or a combination thereof. If the department determines that a design, performance or combination specification is not in the best interest of the State, it may use brand name or equal specifications. Where a brand name or equal specification is used, use of the brand name is for the purpose of describing the base standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award. The department may also use a qualified products list of the federal government or may develop a qualified products list applicable to the State of Ohio. When developing a qualified products list, the department shall solicit a sufficient number of suppliers to ensure maximum coverage with providers of the supplies or services. Any supplier,

not solicited, may request inclusion on the qualified products list. Potential suppliers will be required to furnish exact samples of the supplies or services to be provided for testing and examination by the State. Only those supplies or services that conform to the state's requirements will be considered for inclusion on a qualified products list. The department may also use a brand specific specification when it is determined that the identified brand name supplies or services will satisfy the State's need in the most cost-efficient manner, when the identified brand name supplies or services are necessary to protect the health and well-being of clients of the state, when emergency conditions will not permit acceptance of alternate brand name supplies or services, and when there are two or more authorized stocking distributors available to provide the required brand specific supplies or services. Final approval of, revisions to, and cancellation of the specifications for supplies and services or the proposed criteria and methodology for establishing and maintaining a qualified products list shall be the responsibility of the Department of Administrative Services.

I-33. FDA Registration. In accordance with the Public Health Security and Bioterrorism Preparedness Response Act of 2002, all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food and Drug Administration (FDA) no later than December 31, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furl/ovffreg.html>. By the signature affixed to Page 1 of this ITB, Bidder certifies that Bidder, or his supplier(s) are properly registered with the FDA, unless otherwise exempted from such registration by the FDA.

I-34. Elections Law. Contractor, by signature affixed on this document, hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.

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

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

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
STANDARD CONTRACT TERMS AND CONDITIONS**

I. CONTRACT TERM PROVISIONS:

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

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

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all of the following conditions have been met:

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

C. TERMINATION / SUSPENSION.

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

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

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

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

II. CONTRACT REMEDIES:

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

III. PAYMENT PROVISIONS:

- A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
 1. The purchase order number authorizing the delivery of products or services.
 2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

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

- B. PAYMENT DUE DATE.** Payments under this Contract will be due on the 30th calendar day after the later of:
1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
 2. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with Ohio Revised Code Section §126.30.

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

- A. CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.
- B. GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:
1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
 2. No Deliverable will infringe on the intellectual property rights of any third party.
 3. All warranties are in accordance with Contractor's standard business practices attached.
 4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. 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.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

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

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. 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 will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace 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 fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

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

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

V. GENERAL PROVISIONS:

- A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.
- C. **ASSIGNMENT / DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.
- D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than (5) five business days after the request by the State or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, and misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

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

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

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

- F. CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- G. CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:
1. The location (s) where all services will be performed; and
 2. The location(s) where any state data applicable to the contract will be maintained or made available; and
 3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

- H. DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site:

<http://www.das.ohio.gov/Eod/AEEO.htm>

- J. FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.
- K. GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- L. HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- M. 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.
- N. ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without prior, written consent of the State.
- P. STRICT PERFORMANCE.** 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 construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor.
- R. SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.
- S. TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

S-1. Contract Components. This Contract consists of the complete Invitation to Bid, including the Instructions to Bidders, Terms and Conditions for Bidding, the Standard Contract Terms and Conditions, the Supplemental Contract Terms and Conditions, the Special Contract Terms and Conditions, the bid specifications and any written addenda and contract amendments to the Invitation to Bid; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").

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

S-3. Compensation. In consideration for Contractor's performance each participating state agency will pay Contractor directly at the rate specified in the Contract. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer (EFT). For all transactions the Contractor must have a valid W-9 form on file with the Office of Budget and Management. Registration in OBM's database requires the Contractor to complete an IRS W-9 Form. The completed original form should be mailed to: Office of Procurement Services, 4200 Surface Rd., Columbus, OH 43228-1395.

S-4. Ohio Payment Card. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Procurement Services website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

S-5. Term of Contract. This Contract is effective upon the projected beginning date on the Invitation to Bid cover page or upon signature of DAS whichever is later in time. This Contract will remain in effect until the projected ending date on the Invitation to Bid cover page or until the Contract is fully performed by both parties or until it terminates in accordance with the Ohio constitutional or statutory limitations in Paragraph I-1 of the Contract Terms and Conditions or until it is canceled or terminated, whichever occurs first. State contracts may not extend beyond a biennium. If the term of this Contract extends beyond a biennium, the Contract will terminate on the last day of the current biennium. At that time, DAS may renew this Contract by letter to Contractor no later than July 1, of the new biennium. The operating biennium expires June 30th of each odd-numbered calendar year.

S-6. Contract Renewal. This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be for an appropriate period of time. The cumulative time of all renewals may not exceed twenty-four (24) months unless DAS determines that additional renewal is necessary.

S-7. Requirements Contract. The quantity of supplies or services to be provided under this Contract is the quantity determined by the actual, good faith, requirements of the participating state agencies. DAS may allow a participating state agency to purchase supplies or services identical to those provided under this Contract from a supplier other than Contractor, if one of the following conditions apply:

- (A) The supplies or services to be purchased were not anticipated by DAS at the time this Contract was let and the supplies or services are required in a large quantity;
- (B) The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract; or
- (C) The agency requires the supplies or services to remedy an emergency and Contractor is not able to provide the supplies or services, as the emergency requires.

S-8. F.O.B., The Place of Destination. Contractor must provide supplies or services under this Contract F.O.B. the place of destination. The place of destination will be specified by the participating state agency on the agency's purchase order or other ordering document. Freight will be prepaid unless otherwise stated.

S-9. Time of Delivery. If Contractor is not able to deliver the supplies or services on the date and time specified by the participating state agency on the agency's ordering document, Contractor must coordinate an acceptable date and time for delivery with the agency.

If Contractor is not able to or does not provide the supplies or services to a participating state agency by the date and time provided on the agency's ordering document or by the date and time later agreed upon, the State may obtain any remedy under Section II, "Contract Remedies", as described in the Standard Contract Terms and Conditions or any other remedy at law.

S-10. Minimum Orders-Transportation Charges. For purchase orders placed that are less than the stated minimum order, transportation charges will be prepaid and added to the invoice by the Contractor to the delivery location designated by the ordering agency. Shipment is to be made by private or commercial freight service provider, air, rail, water, parcel post, express or commercial package delivery, whichever is the most economical and expeditious method for proper delivery of the item. Failure of the Contractor to utilize the most economical mode of transportation shall result in the Contractor reimbursing the ordering agency the difference between the most economical mode of transportation and the mode of transportation used by the Contractor. Failure to reimburse the ordering agency shall be considered as a default.

S-11. Price Adjustments. If the Contract provides for a price increase, Contractor may request a price increase in accordance with the Contract. If DAS or contractor becomes aware of a general price decrease for the supplies or services provided under Contract, Contractor must provide a price decrease to the State of Ohio. Failure to provide a decrease will be considered as a default.

S-12. Workers' Compensation. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

S-13. Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The Office of Procurement Services reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy (ies) endorsed to reflect per project / per location general aggregate limits.

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

S-14. Contract Compliance. The participating state agency will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify DAS through a Complaint to Vendor (CTV) to help resolve the infraction(s).

S-15. Quality Assurance. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of the testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

S-16. Electronic Commerce Program. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the contractor by reducing time delays in receiving orders and payments that are associated with the existing manual processes. It is the goal of the State of Ohio to eventually conduct all procurement activities through electronic commerce technologies. Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio in the future. The following information is offered to assist all interested businesses in their efforts to move toward becoming a trading partner with the State of Ohio through the electronic commerce technologies. Electronic Data Interchange (EDI) is used for electronic purchase orders, invoicing, and payment of purchases. The program includes sending electronic purchase orders to the Contractor, the receipt of electronic invoices from the Contractor and the transmission of payment and remittance information back to the Contractor. A complete "Implementation Guide", for doing business with the State of Ohio using EDI, can be found on the Internet at: <http://ecedi.ohio.gov/financial/>. This guide contains all of the information necessary for a company to become EDI compliant. By following all of the links, the entire guide may be viewed, downloaded and printed at your location. In addition, companies who are interested in becoming EDI trading partners with the State of Ohio should visit the Office of Budget and Management's website at www.state.oh.us/obm/BusinessCommunityPage/eCommerce.asp for additional information regarding E-Commerce.

S-17. Usage Reports. At no cost to the State, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by the Office of Procurement Services. The reports will include information as to purchase activity under the Contract by all participating agencies and Co-operative Purchasing Program members. Report topics will include, but will not be limited to: customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information as requested by the Office of Procurement Services. Electronic media is the preferred method for these reports. Failure to provide the requested reports will be deemed as an event of default.

S-18. Return Goods Policy. The State will apply the following Return Goods Policy on all purchases made under the Contract. The bidder acknowledges to have read, understood, and agrees to this Policy.

- (A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
- (B) For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.
- (C) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

S-19. Product Recall. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify DAS-Procurement Services and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

S-20. Ohio Ethics. All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

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

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

S-21. Declaration of Material Assistance. In accordance with R.C. 2909.33(C), I certify that I meet one of the following conditions:

(a) I have **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;
or

(b)(1) I have received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

and,

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

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
INSTRUCTIONS TO BIDDERS FOR REVERSE AUCTIONS

Article RA-0. Description of Reverse Auction Process.

RA-0.1 Definition of Reverse Auction. Reverse auction is a purchasing process in which offerors submit bids in competition to sell services or supplies in an open environment via the internet. The auction itself is an invitation-only, timed event that is open to bidders who have been prequalified.

RA-0.2 Reverse Auction is a Competitive Selection Process. Ohio Revised Code sections 125.01 and 125.072 authorize the use of reverse auction as a form of competitive selection.

RA-0.3 Definition of Bid. In the context of reverse auction, the bid or bid response means all documents, whether attached or incorporated by reference, supplied by the bidder in response to an Invitation to Bid (ITB) by Reverse Auction, including a qualifications summary and the lowest price submitted by the bidder during the auction event.

RA-0.4 Chronology of Reverse Auction Process.

The reverse auction process includes the steps listed below:

- (1) notice of Invitation to Bid by Reverse Auction;
- (2) on-line questions and answers;
- (3) submittal of qualifications summaries;
- (4) preliminary evaluation;
- (5) auction event invitations;
- (6) event preparation and training of bidders;
- (7) auction event;
- (8) final evaluation and award.

Article RA-1. Notice of Invitation to Bid (Step 1).

The State posts bid opportunities on the State Procurement web site at www.ohio.gov/procure. Bidders may also register on-line to be notified automatically of bid opportunities. The invitation to bid document may be downloaded directly from the web site.

Article RA-2. Bid Preparation (Step 2).

RA-2.1 Cost of Preparation. The State of Ohio assumes no responsibility for costs incurred by the bidder prior to the award of any Contract resulting from this bid. Total liability of the State is limited to the terms and conditions of a resulting contract.

RA-2.2 Clarifications, Questions and Answers. If a bidder discovers an inconsistency, error or omission in this ITB, the bidder should request clarification from Procurement Services as indicated on the front page of the ITB. Bidders may post questions regarding this ITB through the State Procurement web site at www.ohio.gov/procure. Questions must be submitted a minimum of five working days prior to the deadline for submitting qualifications summaries. Answers to all bidder questions will be posted on the web site and linked to the bid number. The state will make every attempt to respond to website inquiries within forty-eight (48) hours of receipt. No other form of clarification is

acceptable. Failure of the Bidder to comply may result in the Bidder being deemed not responsive.

RA-2.3 DAS Modifications through Written Addendum. When it is necessary to modify an ITB, DAS does so by written addendum only.

RA-2.4 Damages Arising from Bid Specifications. A bidder may not be compensated for damages arising from inaccurate or incomplete information in the ITB specifications or from inaccurate assumptions based upon the specifications.

Article RA-3. Qualifications Submittal (Step 3).

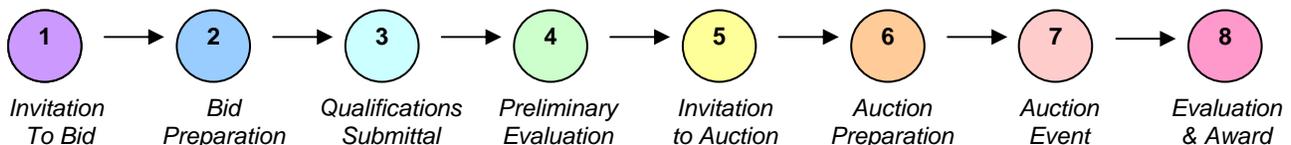
RA-3.1 Complete Qualifications Summary with Authorized Signature. Bidders must submit a complete, signed qualifications summary, which at a minimum should include all of the pages of the ITB that required the bidder to respond and any additional information or samples required by the ITB. The Qualifications Summary should be signed with an original signature on the front page of the ITB. Bidders are requested not to use black ink to sign the qualifications summary. The signature on the qualifications summary shall serve as the signature for the entire bid response.

RA-3.2 How Qualifications Summary May be Delivered. Each summary must be submitted in a sealed envelope with the bid number clearly marked on the exterior. If a bidder uses an express mail or courier service, the bid number must be clearly marked on the exterior of the express mail or courier envelope or must be enclosed in a sealed envelope inside the express mail or courier service envelope, with the bid number clearly marked on the inside envelope. A summary that is not properly and clearly marked and is inadvertently opened before the scheduled bid opening time may be disqualified without additional consideration.

RA-3.3 When Qualifications Summary May be Delivered. DAS must receive the qualifications summary no later than 1:00 p.m. the day the summaries are scheduled for opening. DAS receives summaries during the hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, except state observed holidays. DAS does not accept summaries with insufficient postage, collect on delivery, or through electronic means.

RA-3.4 Where Qualifications Summary Must be Delivered.

Summaries must be delivered to the following address:
 Department of Administrative Services
 General Services Division, Office of Procurement Services
 ATTN.: Bid Desk
 4200 Surface Rd.
 Columbus, OH 43228-1395



RA-3.5 Correction before Qualifications Summary Opening. If a bidder withdraws its summary and resubmits it with revisions, the revisions should be clearly identified and signed or initialed by the bidder. The omission of a bidder's signature or initials to a modification may result in the bid being determined to be not responsive. Any corrections must be completed off the premises.

RA-3.6 Withdrawal before Qualifications Summary Opening. A bidder may withdraw its summary, by written request, any time after DAS receives the summary and before the opening date and time.

Article RA-4. Preliminary Evaluation (Step 4).

RA-4.1 Qualified Bidders List. The department will use information from the qualifications summaries to register bidders for the auction event. The State reserves the right to exclude bidders who are deemed not responsive or not responsible. Reasons for exclusion may include, but are not limited to: late qualifications summary submittal, failure to include mandatory information or samples, and lack of Minority Business Enterprise (MBE) certification for a MBE set aside bid.

RA-4.2 Correction after Qualifications Summary Opening. DAS may permit a bidder alleging an inadvertent error to correct its summary, after opening and prior to the auction event, only if the mistake and the correction are clearly evident from the summary and correction does not otherwise affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

RA-4.3 Withdrawal before Auction Event. A bidder may by written request withdraw its qualifications summary before the auction event, if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty. "Inadvertent" means inattentive or unobservant; heedless; due to oversight; unintentional. If DAS suspects that the qualifications summary contains a mistake, DAS may ask the bidder for written confirmation of its summary.

Article RA-5. Invitation to Auction (Step 5). The department shall provide written notice to each bidder through postal mail or electronic means regarding the bidder's inclusion or exclusion from the qualified bidders list. The notice to excluded bidders shall include the reason(s) for exclusion. Notice to qualified bidders shall include an invitation to the auction event, with the date and time of the event and instructions for participation. The date and time in this invitation shall supercede the estimated date and time written in the invitation to bid.

Article RA-6. Event Preparation and Bidder Training (Step 6). The department or its agent shall work with the bidder to prepare for the auction event. Preparation may include, but is not limited to: configuration of the auction computer system, testing of the bidder interface, delivery of event procedure manuals and other documentation, and training.

Article RA-7. Auction Event (Step 7).

RA-7.1 Participation by Invitation Only. Only those bidders on the qualified bidders list will be allowed to participate in the auction event.

RA-7.2 Event Support. The department or its agent will provide the necessary administrative support to ensure that the integrity of the auction event is not compromised.

RA-7.3 Event Record. The department or its agent will keep an event record, which will include the prices offered by the bidders. The event record will become part of the contract documents and a public record at the conclusion of the event.

RA-7.4 Non-Disclosure of Competitors. The bidder interface will be configured such that a bidder will not know the identity of competing bidders until the event is complete.

RA-7.5 Start of Event. The department or its agent will begin the event through an electronic notification to all qualified bidders.

RA-7.6 Price Submittals. Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response. Prices must be submitted by, or under the direction of, an authorized representative of the bidder as designated in the qualifications summary.

RA-7.7 Tie Bids. In the event that multiple bidders submit identical prices for the same lot, the bid received first will be considered the lowest. Any other identical bids received later will be considered in the order received, as determined by the official clock that the state designates.

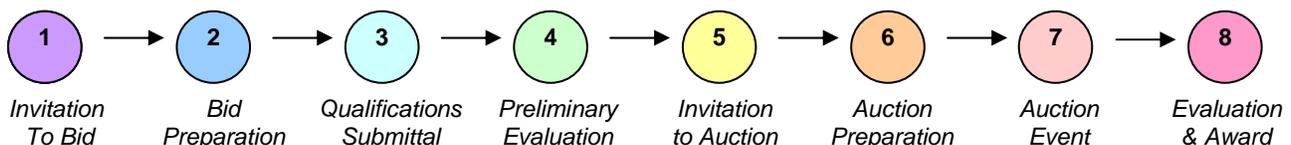
RA-7.8 Event Conclusion and Extensions. The auction event will have a scheduled stop time. The event may be extended if bids are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extensions shall be contained in the event procedure manual that will be distributed to all qualified bidders. The event will conclude at either the scheduled stop time or the time at which all extensions are completed, whichever is later.

Article RA-8. Evaluation and Award (Step 8).

The contract will be awarded to the lowest responsive and responsible bidder as determined by DAS under the Ohio Revised Code (the "Code"). To protect the integrity of the competitive selection process, bids will be closed for public review once the evaluation and award process begins.

RA-8.1 Lowest Bidder. A bidder is lowest if its bid offers the lowest cost supply or service in comparison to all other bidders as set forth in the evaluation paragraph in the bid.

While bidders may offer discounts for prompt payment and other similar incentives, discounts and incentives will not be used to determine the lowest bidder. The lowest bidder will be determined at the conclusion of the on-line reverse auction event.



RA-8.2 Responsive Bidder. A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

RA-8.3 Responsible Bidder. DAS' determination of a bidder's responsibility includes the following factors:

- (A) the experience of the bidder;
- (B) the bidder's financial condition;
- (C) the bidder's conduct and performance on previous contracts;
- (D) the bidder's facilities;
- (E) the bidder's management skills;
- (F) the bidder's ability to execute the contract properly; and
- (G) review of Federal and State of Ohio debarment list.

RA-8.4 Information Requested. DAS may request additional information to evaluate a bidder's responsiveness to the Invitation to Bid or to evaluate a bidder's responsibility. If a bidder does not provide the requested information, it may adversely impact DAS' evaluation of the bidder's responsiveness or responsibility.

RA-8.5 Bids are Firm for 90 Days. Unless stated otherwise, all bids are irrevocable for ninety (90) days after the conclusion of the auction event. Beyond ninety (90) days, the bidder will have the option to honor its bid or make a written request to withdraw its bid from consideration.

RA-8.6 Preference for Ohio Products. The bid award may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

RA-8.7 Rejected Bids. DAS may reject any bid, in whole or in part, if any of the following circumstances are true:

- (A) bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the Invitation to Bid,
- (B) the price of the lowest responsive and responsible bid is excessive in comparison with market conditions or with the purchasing agency's available funds, or
- (C) DAS determines that awarding any item is not in the best interest of the State of Ohio.

Article RA-9. Public Disclosure during Reverse Auction Process.

RA-9.1 Opening of Qualifications Summaries. The public may attend the opening of the qualifications summaries. After summaries are opened and certified by the Auditor of State, a list of respondents will be available for public review by interested parties who have registered with the bid desk. Once summaries have been opened and certified, they will be forwarded to the contract analyst to begin the evaluation process. The contents of the qualifications summaries will not be open to public inspection until after the award.

RA-9.2 Public Viewing of Auction Event. The public may attend the internet auction event. The auction event will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

RA-9.3 Public Records upon Award. After the contract is awarded the qualifications summaries and associated documents are public records as defined in Ohio Revised Code 149.43 and are subject to all laws appurtenant thereto.

Article RA-10. Requests for Revisions or Additions to the Bid.

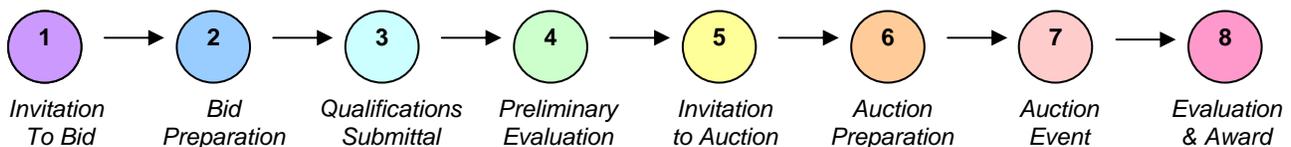
Bidders are required to comply with all of the terms and conditions of the Invitation to Bid, whether the bidder had actual knowledge of the terms and conditions of the Invitation to Bid and regardless of any statement or omission in the bid that might indicate a bidder's contrary intention. DAS will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

Article RA-11. Samples.

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

Article RA-12. Protests and Communications During Evaluation.

Any bidder who is not in agreement with the competitive selection process used to make the award may file a protest. The protest must be timely and submitted in writing to the Procurement Services Administrator. Any attempt by the bidder, the bidder's agent(s), or any party representing the bidder to file a protest with any entity of the State of Ohio other than the Administrator may result in the bidder being deemed as not responsive. During the evaluation process, unless requested by Procurement Services as part of the evaluation process, any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder, to submit correspondence that is determined by DAS to be an attempt to compromise the impartiality of the evaluation or any attempt on the part of the bidder, the bidder's agent(s), or any party representing the bidder to communicate with any member of the State regarding the evaluation process may be grounds for immediate disqualification of the bidder. A determination to stay the proceedings or reverse an award determination will be at the sole discretion of the Procurement Services Administrator. The decision of the Administrator shall be final and conclusive unless any person adversely affected by the decision commences an action in a court of law.



Article RA-13. Ethics. All bidders and employees of the Office of Procurement Services are bound by the ethics laws of the State of Ohio. Any bidder or employee who violates any of these laws will be subject to penalties set forth by law.

Article RA-14. Registration with the Secretary of State. By the signature affixed to this Bid, the bidder attests that the Bidder is:

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

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

Article RA-15. Certification Regarding Contract Eligibility With Other Governmental Entities. By the signature affixed on Page 1, bidder hereby certifies that bidder has not, within the last seven (7) years been the subject of any government action to limit the bidder's right to do business with the government within the last seven (7) years, please provide a written explanation with the bid response.

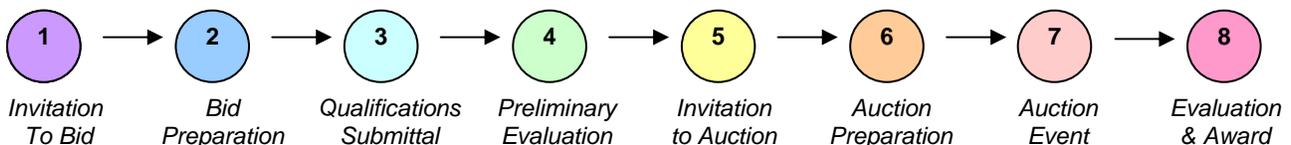
Article RA-16. Non-Collusion Certification. By the signature affixed on page one (1) of the bid, the bidder certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing bid; that such bid is genuine and not collusive or sham; that bidder has not colluded, conspired or agreed, directly or indirectly, with any bidder or person, to put in a sham bid; or colluded or conspired to have another not bid and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the bid price of its bid or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against any bidder or any person or persons interested in the proposed contract and that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted this bid, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

RA-17. Specifications. The Department of Administrative Services is authorized to prepare specifications to obtain supplies and services. The purpose of the specification is to describe the supplies or services to be purchased and will serve as a basis for comparison of bid responses. The department may use any form of specification it determines to be in the best interest of the State and

that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification, a performance specification or a combination thereof. If the department determines that a design, performance or combination specification is not in the best interest of the State, it may use brand name or equal specifications. Where a brand name or equal specification is used, use of the brand name is for the purpose of describing the base standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award. The department may also use a qualified products list of the federal government or may develop a qualified products list applicable to the State of Ohio. When developing a qualified products list, the department shall solicit a sufficient number of suppliers to ensure maximum coverage with providers of the supplies or services. Any supplier, not solicited, may request inclusion on the qualified products list. Potential suppliers will be required to furnish exact samples of the supplies or services to be provided for testing and examination by the State. Only those supplies or services that conform to the state's requirements will be considered for inclusion on a qualified products list. The department may also use a brand specific specification when it is determined that the identified brand name supplies or services will satisfy the State's need in the most cost-efficient manner, when the identified brand name supplies or services are necessary to protect the health and well-being of clients of the State, when emergency conditions will not permit acceptance of alternate brand name supplies or services, and when there are two or more authorized stocking distributors available to provide the required brand specific supplies or services. Final approval of, revisions to, and cancellation of the specifications for supplies and services or the proposed criteria and methodology for establishing and maintaining a qualified products list shall be the responsibility of the department.

RS-18 Suspension and Debarments. The Department of Administrative Services will not award a contract for goods or services, funded in whole or in part with Federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties.

RS-19. FDA Registration. In accordance with the Public Health Security and Bioterrorism Preparedness Response Act of 2002, all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food and Drug Administration (FDA) no later than December 12, 2003. This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: <http://www.cfsan.fda.gov/~furl/ovffreg.html>. By the signature affixed to Page 1 of this ITB, Bidder certifies that Bidder, or his supplier(s) are properly registered with the FDA, unless otherwise exempted from such registration by the FDA.



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

STANDARD CONTRACT TERMS AND CONDITIONS

I. CONTRACT TERM PROVISIONS:

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

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

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all of the following conditions have been met:

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

C. TERMINATION / SUSPENSION.

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

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

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

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

II. CONTRACT REMEDIES:

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

III. PAYMENT PROVISIONS:

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

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

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

B. PAYMENT DUE DATE. Payments under this Contract will be due on the 30th calendar day after the later of:

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

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

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

B. GENERAL REPRESENTATIONS AND WARRANTIES. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with Contractor's standard business practices attached.
4. That the Deliverables hereunder are merchantable and fit for the particular purpose described in this contract.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. 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.
8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

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

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon

consultation with and approval by the Office of the State Attorney General. 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 will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace 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 fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

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

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

V. GENERAL PROVISIONS:

- A. AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.
- B. ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.
- C. ASSIGNMENT / DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.
- D. AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, and misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

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

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

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

- F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:
1. The location (s) where all services will be performed; and
 2. The location(s) where any state data applicable to the contract will be maintained or made available; and
 3. The principal location of business for the contractor and all subcontractors.
- Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.
- H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including Ohio Revised Code Section §125.111, and all related Executive Orders.
- J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.
- K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- M. **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.
- N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without prior, written consent of the State.

- P. **STRICT PERFORMANCE.** 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 construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- Q. **SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor.
- R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.
- S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

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

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

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

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SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

S-1. Contract Components. This Contract consists of the complete Invitation to Bid, including the Instructions to Bidders, Terms and Conditions for Bidding, the Standard Contract Terms and Conditions, the Supplemental Contract Terms and Conditions, the Special Contract Terms and Conditions, the bid specifications and any written addenda and contract amendments to the Invitation to Bid; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").

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

S-3. Compensation. In consideration for Contractor's performance each participating state agency will pay Contractor directly at the rate specified in the Contract. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer (EFT). For all transactions the Contractor must have a valid W-9 form on file with the Office of Budget and Management. Registration in OBM's database requires the Contractor to complete an IRS W-9 Form. The completed original form should be mailed to: Office of Procurement Services, 4200 Surface Rd., Columbus, OH 43228-1395.

S-4. Ohio Payment Card. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Procurement Services website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

S-5. Term of Contract. This Contract is effective upon the projected beginning date on the Invitation to Bid cover page or upon signature of DAS whichever is later in time. This Contract will remain in effect until the projected ending date on the Invitation to Bid cover page or until the Contract is fully performed by both parties or until it terminates in accordance with the Ohio constitutional or statutory limitations in Paragraph I-1 of the Contract Terms and Conditions or until it is canceled or terminated, whichever occurs first. State contracts may not extend beyond a biennium. If the term of this Contract extends beyond a biennium, the Contract will terminate on the last day of the current biennium. At that time, DAS may renew this Contract by letter to Contractor no later than July 1, of the new biennium. The operating biennium expires June 30th of each odd-numbered calendar year.

S-6. Contract Renewal. This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be for an appropriate period of time. The cumulative time of all renewals may not exceed twenty-four (24) months unless DAS determines that additional renewal is necessary.

S-7. Requirements Contract. The quantity of supplies or services to be provided under this Contract is the quantity determined by the actual, good faith, requirements of the participating state agencies. DAS may allow a participating state agency to purchase supplies or services identical to those provided under this Contract from a supplier other than Contractor, if one of the following conditions apply:

- (A) The supplies or services to be purchased were not anticipated by DAS at the time this Contract was let and the supplies or services are required in a large quantity;
- (B) The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract; or
- (C) The agency requires the supplies or services to remedy an emergency and Contractor is not able to provide the supplies or services, as the emergency requires.

S-8. F.O.B., The Place of Destination. Contractor must provide supplies or services under this Contract F.O.B. the place of destination. The place of destination will be specified by the participating state agency on the agency's purchase order or other ordering document. Freight will be prepaid unless otherwise stated.

S-9. Time of Delivery. If Contractor is not able to deliver the supplies or services on the date and time specified by the participating state agency on the agency's ordering document, Contractor must coordinate an acceptable date and time for delivery with the agency.

If Contractor is not able to or does not provide the supplies or services to a participating state agency by the date and time provided on the agency's ordering document or by the date and time later agreed upon, the State may obtain any remedy under Section II, "Contract Remedies", as described in the Standard Contract Terms and Conditions or any other remedy at law.

S-10. Minimum Orders-Transportation Charges. For purchase orders placed that are less than the stated minimum order, transportation charges will be prepaid and added to the invoice by the Contractor to the delivery location designated by the ordering agency. Shipment is to be made by private or commercial freight service provider, air, rail, water, parcel post, express or commercial package delivery, whichever is the most economical and expeditious method for proper delivery of the item. Failure of the Contractor to utilize the most economical mode of transportation shall result in the Contractor reimbursing the ordering agency the difference between the most economical mode of transportation and the mode of transportation used by the Contractor. Failure to reimburse the ordering agency shall be considered as a default.

S-11. Price Adjustments. If the Contract provides for a price increase, Contractor may request a price increase in accordance with the Contract. If DAS or contractor becomes aware of a general price decrease for the supplies or services provided under Contract, Contractor must provide a price decrease to the State of Ohio. Failure to provide a decrease will be considered as a default.

S-12. Workers' Compensation. The contractor will provide the following insurance coverage at its own expense throughout the term of this Contract: Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

S-13. Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The Office of Procurement Services reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy (ies) endorsed to reflect per project / per location general aggregate limits.

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

S-14. Contract Compliance. The participating state agency will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify DAS through a Complaint to Vendor (CTV) to help resolve the infraction(s).

S-15. Quality Assurance. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of the testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

S-16. Electronic Commerce Program. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the contractor by reducing time delays in receiving orders and payments that are associated with the existing manual processes. It is the goal of the State of Ohio to eventually conduct all procurement activities through electronic commerce technologies. Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio in the future. The following information is offered to assist all interested businesses in their efforts to move toward becoming a trading partner with the State of Ohio through the electronic commerce technologies. Electronic Data Interchange (EDI) is used for electronic purchase orders, invoicing, and payment of purchases. The program includes sending electronic purchase orders to the Contractor, the receipt of electronic invoices from the Contractor and the transmission of payment and remittance information back to the Contractor. A complete "Implementation Guide", for doing business with the State of Ohio using EDI, can be found on the Internet at: <http://ecedi.ohio.gov/financial/>. This guide contains all of the information necessary for a company to become EDI compliant.

By following all of the links, the entire guide may be viewed, downloaded and printed at your location. In addition, companies who are interested in becoming EDI trading partners with the State of Ohio should visit the Office of Budget and Management's website at www.state.oh.us/obm/BusinessCommunityPage/eCommerce.asp for additional information regarding E-Commerce.

S-17. Usage Reports. At no cost to the State, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by the Office of Procurement Services. The reports will include information as to purchase activity under the Contract by all participating agencies and Co-operative Purchasing Program members. Report topics will include, but will not be limited to: customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information as requested by the Office of Procurement Services. Electronic media is the preferred method for these reports. Failure to provide the requested reports will be deemed as an event of default.

S-18. Return Goods Policy. The State will apply the following Return Goods Policy on all purchases made under the Contract. The bidder acknowledges to have read, understood, and agrees to this Policy.

- (A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
- (B) For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.
- (C) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

S-19. Product Recall. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify DAS-Procurement Services and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

S-20. Ohio Ethics. All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relative Divisions of O.R.C. Sections 102.01 to 102.09, and Governor Strickland's Executive Order 2007-01S for Ethics.

In accordance with Executive Order 2007-01S, Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other Contracts with the state of Ohio up to and including debarment.

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

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

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Ethics
POLICY/PROCEDURE NO.: PUR- 001
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services required for the daily operation of their facilities. Agencies are permitted to make purchases of supplies up to \$33,500 and services up to \$67,000 under their direct purchase authority for items not covered by a mandatory state source (i.e. OPI, DMH/OSS, RSC, State Use, DAS). Purchases that exceed these limits must be procured by or through the Department of Administrative Services or must be approved by the Controlling Board.

The Office of Procurement Services is responsible for establishing contracts for the various non-IT supplies and services required by state agencies. The processes associated with these contracting efforts involve the expenditure of tax dollars that creates a trust between Procurement Services and the general public. This Policy and Procedure will set forth the guidelines that Procurement Services will follow to protect this trust and to establish fair and equal treatment of all vendors who are interested in participating in the procurement of these supplies and services.

II. Scope

This policy is applicable to all employees of Procurement Services to include their spouse, children and family relatives as described in the Ohio Revised Code. To the extent permitted by law, this policy also applies to all private companies and their employees conducting business with or seeking to do business with the state of Ohio or with Procurement Services. This policy is not intended to replace or modify any existing laws, executive orders or DAS departmental policies relative to ethics. If any terms of this policy conflict, the existing laws, executive orders or departmental policies shall prevail.

III. Policy

The Office of Procurement Services will conduct all procurement activities in a manner above reproach and with complete impartiality and preferential treatment to none. Employees will receive ongoing routine training on Ohio's ethics laws, Executive Orders and Departmental Policies and will conform to the requirements of such. Prior to July 1 of a new biennium, employees will receive formal training on Ohio's Ethics Laws through programs offered by the Ohio Ethics Commission.

IV. Procedures

A. Employee Responsibility

All employees of Procurement Services are responsible to become familiar with the ethics laws of the state of Ohio (ORC 102.01 to 102.09), any Executive Orders and DAS departmental policies pertaining to ethical conduct. Employees are required to perform their daily activities in a professional and responsible manner to maintain the public trust. Employees must avoid any “perception of impropriety”. Employees who violate the ethics laws, Executive Order(s) or DAS departmental policies will be subject to any penalties set forth by law, as well as, be subject to disciplinary action up to and including termination of employment.

In addition to the legal requirements for ethical conduct, employees of Procurement Services shall comply with the following:

- 1) No employee shall solicit anything of value for personal use, either directly or indirectly, from anyone who has or is seeking to do business with the State or with Procurement Services.
- 2) No employee shall use or authorize the use of their position of employment to secure anything of value for personal use, or promise or offer to provide anything of value from anyone who has or is seeking to do business with the State or with Procurement Services.
- 3) No employee shall outwardly display promotional items provided by anyone who has or is seeking to do business with the State or with Procurement Services. Use of promotional items may be permissible if done in such a manner so as to not disclose the name, logo or other identifying trademark of the supplier.
- 4) Employees may participate in business lunches, dinners, trade events or conferences provided that such activities are not established to discuss a forthcoming procurement or bid or RFP that is under evaluation. Employees are expected to pay for their meals, registration, travel or lodging subject to reimbursement in accordance with state travel policies. Acceptance of door prizes or gifts is discouraged. However, if a door prize or gift of nominal value is accepted from an entity that is doing business or seeking to do business with the State or with Procurement Services, it must be reported. If the value of the prize exceeds \$20.00, the employee must follow the filing requirements set forth by DAS and the Ethics Commission. Employees should use good judgment when participating in such activities.
- 5) All activities of Procurement Services are of public interest and a matter of public record. Employees shall conduct their official duties so that all actions can be fully substantiated and legally defended. No employee shall disclose or use, without proper authorization, any information acquired in the course of performing their official duties. Employees shall maintain complete and concise records on all activities subject to existing laws pertaining to public records.
- 6) When required, employees shall file, an annual Financial Disclosure Statement with the Ohio Ethics Commission.

B. Vendor responsibilities

All suppliers who are actively doing business with or seeking to do business with the State and/or with Procurement Services are expected to perform their business activities in a professional manner and avoid any “perceptions of impropriety”. Suppliers will be responsible to review and become familiar with the ethics laws of the state of Ohio. Any supplier who violates Ohio’s ethics laws or any executive order or DAS policy will be subject to legal penalties up to and including debarment.

Procurement Services utilizes a variety of methods for establishing contracts for supplies and services which include: Competitive Sealed Bidding, Competitive Sealed Proposals, Reverse Auction, Multiple Award Contracts and State Term Schedules. Processes for implementing these methods have been developed to ensure fair and equal treatment of all vendors participating in the procurement activity. Any vendor that attempts to influence the evaluation and/or award of a contract either directly or through an outside agent or representative will be disqualified and will not be able to participate in the procurement activity. In addition, a vendor who attempts to influence an evaluation and award will be subject to penalties set forth by law up to and including debarment from doing business with the Department of Administrative Services and/or the state of Ohio.

C. Suspected violation of ethics laws

Suspected violations of Ohio’s ethics laws, executive orders or DAS policies and procedures by any employee of the State or vendor are to be reported to the Administrator of the Office of Procurement Services. The Administrator will advise the Division Deputy Director and may forward the evidence to the DAS Office of Chief Counsel for their review and disposition. If the Office of Chief Legal Counsel concurs that a violation has occurred, the Director of Administrative Services, and, if applicable, the Ohio Attorney General and Ohio Ethics Commission will be notified and the matter will be turned over to them for resolution.

V. Professional Membership

Procurement Services maintains membership in the following professional procurement organizations: National Association of State Procurement Officials (NASPO), National Institute of Governmental Purchasing (NIGP), Central Ohio Organization of Public Purchasers (CO-OPP) Chapter of NIGP and the Ohio, Indiana, Northern Kentucky (O.I.N.K.) Chapter of NIGP. These organizations subscribe to high ethical standards intended to govern the conduct of its members. Published herein is the Code of Ethics of the National Institute of Governmental Purchasing. To the extent practicable and permissible under Ohio law, Procurement Services Division has adopted the NIGP Code of Ethics.



NIGP CODE OF ETHICS

The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.

Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.

Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.

Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.

Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.

Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.

Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

GUIDELINES TO THE NIGP CODE OF ETHICS

I. RESPONSIBILITY TO YOUR EMPLOYER

Follow the lawful instructions or laws of the employer.

Understand the authority granted by the employer.

Avoid activities, which would compromise or give the perception of compromising the best interest of the employer.

Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.

Obtain the maximum benefit for funds spent as agents for the employer.

II. CONFLICT OF INTEREST

Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Avoid engaging in personal business with any company that is a supplier to your employer.

Avoid lending money to or borrowing money from any supplier.

III. PERCEPTION

Avoid the appearance of unethical or compromising practices in relationships, actions and communications.

Avoid business relationships with personal friends. Request a reassignment if the situation arises.

Avoid noticeable displays of affection, which may give an impression of impropriety.

Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or your peers.

IV. GRATUITIES

Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers which might influence or appear to influence purchasing decisions.

Never solicit gratuities in any form for yourself or your employer.

Items of nominal value offered by suppliers for public relations purposes are acceptable when the value of such items has been established by your employer and would not be perceived by the offeror, receiver or others as posing an ethical breach.

Gifts offered exceeding nominal value should be returned with an explanation or if perishable either returned or donated to a charity in the name of the supplier.

In the case of any gift, care should be taken to evaluate the intent and perception of acceptance to ensure that it is legal, that it will not influence your buying decisions, and that it will not be perceived by your peers and others as unethical.

V. BUSINESS MEALS

There are times when during the course of business it may be appropriate to conduct business during meals. In such instances, the meal should be for a specific business purpose.

Avoid frequent meals with the same supplier.

The purchasing professional should be able to pay for meals as frequently as the supplier. Budgeted funds should be available for such purposes.

VI. CONFIDENTIAL INFORMATION

Keep bidders' proprietary information confidential.

Develop a formal policy on the handling of confidential information.

VII. RELATIONSHIP WITH THE SUPPLIER

Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.

Association with suppliers at lunches, dinners or business organization meetings is an acceptable professional practice enabling the buyer to establish better business relations provided that the buyer keeps free of obligation. Accordingly, it is strongly recommended that if a seller pays for an activity that the buyer reciprocate.

Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure.

Preclude from showing favoritism or be influenced by suppliers through the acceptance of gifts, gratuities, loans or favors. Gifts of a nominal value that display the name of a firm which is intended for advertisement may or may not be accepted in accordance with the recipient's own conscience or jurisdictional rules.

Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.

Refrain from publicly endorsing products.

VIII. RELATIONSHIP WITH THE EMPLOYER

Remain free of any and all interests and activities, which are or could be detrimental or in conflict with the best interests of the employer.

Refrain from engaging in activities where the buyer has a significant personal or indirect financial interest.

Exercise discretionary authority on behalf of the employer.

Avoid acquiring interest or incurring obligations that could conflict with the interests of the employer.

IX. RELATIONSHIPS WITH OTHER AGENCIES AND ORGANIZATIONS

A buyer shall not use his position to exert leverage on individuals or firms for the purpose of creating a benefit for agencies or organizations that he may represent.

All involvement and transactions shall be handled in a professional manner with the interest of the buyer's employer taking precedent.

X. RELATIONSHIP WITH PROFESSIONAL PURCHASING ORGANIZATIONS AND ASSOCIATIONS.

It is the obligation and the responsibility of the buyer, through affiliation with professional organization, to represent that organization in a professional and ethical manner.

A buyer shall not use his position to persuade an individual or firm to provide a benefit to an organization.

XI. POLICY

It is the policy of NIGP that any member of the Institute who personally, or on behalf of his local chapter, is involved in the process of acquiring advertisers and/or exhibitors on behalf of the Institute, shall act only in the capacity of providing referrals of potential or interested parties to the Institute. As a result of such referral, should the Institute form a contractual obligation, appropriate credit shall be given to the individual or chapter.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Fraud, Waste and Abuse
POLICY/PROCEDURE NO.: PUR- 002
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 Billion for supplies and services required for the daily operation of their facilities. Each department, agency, institution, board and commission, authorized to make purchases of supplies and services, bears a duty to the public to make all procurements in a responsible manner to avoid the potential for accusations of fraud, waste or abuse. Procurement activity must reflect that the item meets the need of the agency, meets the quality standards set forth in the specifications and is used for the intended purpose.

II. Scope

This Policy and Procedure will provide guidance to identify and report situations of fraud, waste and abuse of state-owned property including equipment, supplies, services, staff, reimbursements and expenditures.

III. Policy

It is the responsibility of each employee of Procurement Services, to perform their daily activities to avoid accusations of fraud, waste or abuse. Think of this office as living and working in a glass bowl, everyone is watching us. Caution must be exercised, however, to distinguish between errors and incidents of fraud, waste or abuse.

IV. Recognizing Fraud, Waste, or Abuse

- A. “*Fraud*” means a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.¹ Fraud can take many forms such as insurance fraud, mail fraud, bank fraud or criminal fraud. One type of fraud that could best describe procurement processes is “*fraud in the inducement*” which occurs when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties or obligations involved; an intentional misrepresentation of a material risk or duty reasonably relied upon,

¹ Black’s Law Dictionary, 8th Edition ©2004

thereby injuring the other party without vitiating the contract itself, especially about a fact relating to value². Sometimes it can be very difficult to recognize when one party to a contract has committed fraud and it may not be seen until some point well after the contract has been performed and payment has been completed. Proving an incident of fraud can be difficult as one must be able to show evidence that the accused party intentionally misleads the other party for personal gain. What might appear to be an event of fraud could actually be an error on the part of the individual. Thus caution must be used to ensure that evidence clearly indicates that fraud has occurred. Examples that could be interpreted as fraud include, but are not limited to:

- Collusive bidding (bid rigging, price fixing)
- Falsification of bid certifications
- Contract steering
- Product substitution with sub-standard products
- Bribery
- False invoices to gain payment for goods or services not provided

B. “*Waste*” means to use, consume, or expend carelessly or thoughtlessly.³ Waste can take many forms. It is not difficult to find oneself in a situation of carelessly or thoughtlessly throwing away supplies that may have some useful life available or failing to recycle items that could be used to produce new supplies. Employees should be cognizant of how they use supplies and make every effort to use the item to its fullest extent. Employees must be reminded that tax dollars are being used to purchase the item and failure to use the item to their fullest extent is a waste of the item and tax dollars. Flagrant waste should be reported to management. Examples of waste include, but are not limited to:

- Purchase of higher quality item when lesser quality would suffice
- Failure to recycle
- Failure to utilize energy efficient supplies and equipment
- Acquire supplies and store in inventory beyond warranty periods
- Release of new/unused supplies to surplus

C. “*Abuse*” means to use wrongly or improperly.⁴ Situations of abuse occur when an employee intentionally misuses state-owned property that could result in damage to item and additional expense to the state to repair it. Intentional and flagrant issues of abuse should be reported to management. Examples of abuse include, but are not limited to:

- Intentional slamming down the lid of a copier
- Kicking a computer hard drive
- Pouring liquid onto a computer keypad
- Using a state vehicle to tow another vehicle
- Improper use of office equipment

² Black’s Law Dictionary, 8th Edition ©2004

³ Webster’s New College Dictionary, 3rd Edition ©2005

⁴ Webster’s College Dictionary, 3rd Edition ©2005

V. Procedures to protect against suspected Fraud, Waste and Abuse

- A. *Bid/RFP Documents.* Staff responsible to develop bid/RFP documents will review agency requests and make necessary adjustments to ensure that all terms, conditions and specifications reflect current industry. The State has a right to set forth certain baseline product requirements to ensure that the needs of the agency are met, but should avoid specifications that would restrict open competition. There may be situations where it is necessary to limit specifications to a certain brand to protect the interests of the state which must conform to the requirements of the Ohio Administrative Code.
- B. *Copier Pre-Approvals.* A Pre-Approval is required from Procurement Services when an agency intends to make a purchase of a copier. This is to ensure that items being purchased from a term contract are listed in the contract, that equipment being purchased corresponds to the need of the agency, to ensure that the method of acquisition is in the best interest of the agency and that pricing reflects what was accepted by Procurement Services. If not making the purchase from a term contract, the agency must provide sufficient evidence as to why they are not making the purchase from the term contract. Staff responsible for the review of pre-approvals will examine the documents to ensure that items and quantities listed conform to existing contract terms, conditions and specifications. If deemed appropriate, the pre-approval may be denied and a separate bid may be issued for the supplies or services to promote more favorable pricing, etc.
- C. *Release and Permits.* A Release and Permit may be requested by an agency when the purchase exceeds their direct purchase limits, when time to complete the purchase is a critical factor or when the item is used equipment or a sole source. Staff responsible for approving a release and permit will review the supplies or services to be purchased and the reasons for the agency requesting a release and permit. If determined that the purchase was not deliberately held to avoid the bidding processes and/or that it is not possible or advantageous for Procurement Services to establish a contract for requested supplies or services, the request will be approved. If the request is denied, the agency will re-submit the request to Procurement Services for procurement under formal competitive processes.
- D. *Contract Waivers.* A Contract waiver may be requested when the vendor on a mandatory contract is unable to furnish the requested supplies or services. The respective manager will review the written request and, if valid, will approve the waiver.

VI. Reporting Suspected Incidents of Fraud, Waste and Abuse

Suspected incidents of fraud, waste or abuse, either by an employee of the Procurement Services or by an employee of a state agency, should be reported, in writing, to the Administrator. If the Administrator has reason to believe that an incident of fraud, waste or abuse has occurred, the Administrator will forward the evidence to the Deputy Director of the General Services division and to the DAS Office of Chief Counsel for their review and disposition. A number of laws have been passed to protect individuals who report incidents of fraud, waste and abuse from retribution. It is the responsibility of the person reporting the incident to seek legal advice to ensure they are protected under the “Whistle Blower” laws.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Domestic & In-State Preferences
POLICY/PROCEDURE No.: PUR-003
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

In 1983, the 115th General Assembly enacted Sections 125.09 and 125.11 of the Ohio Revised Code that require the Department of Administrative Services (“DAS”) and other state agencies apply a preference to domestic Ohio bids for supplies and services, except construction, to be purchased pursuant to these statutes. DAS prescribed further criteria to be used in giving preference to domestic and Ohio products as described in Section 123:5-1-06 of the Ohio Administrative Code. The OAC established this preference at 5% over the price offered by a non-Ohio bidder.

These laws apply to competitive sealed bids and competitive sealed bids by reverse auction issued by DAS and to procurements made by state agencies under their direct or delegated authority. When evaluating bids, it is first determined whether the bidder is offering a domestic end product (Buy America) and then if the bidder is offering an Ohio produced product or if the bidder is not offering an Ohio produced product, but is claiming to have significant Ohio economic presence (Buy Ohio).

Law also permits DAS and state agencies to treat bidders located in a state bordering Ohio on the same basis as if the bidder is an Ohio bidder. As long as the border state does not impose a greater restriction upon Ohio bidders selling products or services to agencies of that state, the border state bidder will receive the same preference as an Ohio bidder. DAS recognizes the Commonwealths of Kentucky and Pennsylvania and states of Michigan, Indiana and New York as border states as they do not apply a preference against Ohio bidders. The state of West Virginia does apply a preference to Ohio bidders and is, therefore, not eligible to receive the border state preference.

II. Scope

This Policy and Procedure will describe the criteria DAS will follow when evaluating bid responses and how the domestic and in-state preferences will be applied. DAS will apply the domestic and in-state preferences to all competitive sealed bids and reverse auctions. After application of the preferences, contracts will be awarded to the lowest responsive and responsible bidder in accordance with Section 125.11 of the Revised Code. A state agency

must adopt this Policy and Procedure for use in applying the domestic and in-state preferences to their direct and/or delegated procurements.

III. Policy

This Policy and Procedure will be applied in accordance with Ohio Revised Code Sections 125.09 and 125.11 and Ohio Administrative Code Section 123:5-1-06, as amended. This Policy and Procedure is only applicable to those contracts established through issuance of Competitive Sealed Bids and/or Reverse Auction. All other recognized methods of contracting by DAS are exempt from the requirements of the domestic and in-state preferences set forth in this Policy and Procedure.

IV. Definitions

“Border State” means any state that is contiguous to Ohio and that does not impose a restriction greater than Ohio imposes pursuant to section 125.09 of the Revised Code. To qualify for significant economic presence, the border state bidder must have either 10 or more employees or at least 75% of their employees based in the respective border state where the bidder’s company resides.

“Canadian End Product”¹ means an article that (1) is wholly the growth, product, or manufacture of Canada; or (2) in the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Domestic End Product”² means (1) an un-manufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds fifty percent of the cost of all its components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“Employer” means a person who controls and directs a worker under an express or implied contract of hire and who pay’s the worker’s salary or wages.

¹ 48 CFR Ch 1 (10-1-02 Edition) Subpart 25.5, 25.003 Definitions

² 48 CFR Ch. 1 (10-1-02 Edition) Subpart 25.5, 25.003 Definitions.

“Employee” means a person who works in the service of another person (the employer) under and express or implied contract of hire, under which the employer has the right to control the details of work performance.

“Mexican End Product”³ means an article that (1) is wholly the growth, product, or manufacture of Mexico; or (2) in the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Ohio Bid” means a bid received from a bidder offering Ohio products or a bidder demonstrating significant Ohio economic presence.

“Ohio Products” means products that are mined, excavated, produced, manufactured, raised, or grown by a person where the input of Ohio products, labor, skill, or other services constitutes no less than twenty-five percent of the manufactured cost. With respect to mined products, such products shall be mined or excavated in this state.

“Produced” means the manufacturing, processing, mining, developing, and making of a thing into a new article with a distinct character in use through the application of input, within this estate, of Ohio products, labor, skill or other services. “Produced” does not include the mere assembling or putting together of non-Ohio products or materials.

“Significant Ohio Economic Presence” means business organizations that:

- (1) Pay required taxes to the state of Ohio; and
- (2) Are registered and licensed to do business in the state of Ohio with the office of the Secretary of State; and
- (3) Have ten or more employees based in Ohio, or seventy-five percent or more of their employees based in Ohio.

“Sole Proprietorship” means a business in which one person owns all the assets, owes all the liabilities and operate in his or her personal capacity.

V. General Provisions & Requirements

- 1) **Certificate for Domestic and Ohio Preference.** Section 125.09(A) requires that bidders claiming the preference complete the Certificate for Domestic and Ohio Preference form contained in the bidding document. This form must be completed for each bid, failure to do so will result in the bidder being ineligible to receive the preference, regardless of whether they are offering an Ohio product or have significant Ohio economic presence. DAS will rely upon information provided by the bidder in this form when evaluating the bidder for the domestic and in-state preferences. In the event that DAS has reason to believe that the information is not current, is erroneous, or if a bidder fails to totally

³ 48 CFR Ch. 1 (10-1-02 Edition) Subpart 25.2, 25.003 Definitions

complete the Certification form, DAS will conduct additional research to verify the information as deemed necessary pursuant to OAC 123:5-1-06. Any bidder who intentionally submits false or misleading information in an attempt to receive the preferences will be immediately disqualified and may be subject to legal action up to and including debarment.

- 2) **Non-Available Articles, Materials and Supplies.** The Federal “Buy America” Act includes a provision that the Federal Administrator⁴ may develop a listing of those articles, materials and supplies that are not available in the United States in sufficient commercial quantities or of a satisfactory quality. Items contained in this listing are exempt from the requirements of Buy America. DAS has adopted the Federal list and will not apply the requirements of Buy America to such items. Further, DAS will review articles, materials and supplies to insure availability in sufficient commercial quantities in the United States and that such are of satisfactory quality. If determined otherwise, these items will appear on the DAS list of non-available articles, materials and supplies. Both the Federal and DAS lists of non-available articles, materials and supplies are a part of this Policy and Procedure. The contract analyst will make a determination if the requested products appear on any non-available lists and so note in the bidding documents that Buy America will not be applicable during evaluation of bid responses.
- 3) **Sufficient Competition / Excessive Price:** Section 125.09(C)(6) of the Revised Code permits DAS to waive the requirements of the domestic and in-state preferences on a contract-by-contract basis where compliance would result in the state agency paying an excessive price or acquiring an inferior product. Sufficient competition must exist to apply the domestic and in-state preferences. Ohio law defines sufficient competition as two or more qualified bids offering products produced or mined in the United States or in Ohio there is sufficient competition to proceed with evaluation of the bids. For purposes of Buy America, a price is excessive if the lowest domestic price exceeds the lowest foreign price by more than 6%⁵. For purposes of Buy Ohio, a price is deemed to be excessive when the lowest “Ohio” bid exceeds the lowest non-Ohio bid be more than 5%. If sufficient competition does not exist (i.e.; only one bid submitted) or if it is determined that all prices are excessive, the analyst may: 1) recommend cancellation of the bid in its entirety, 2) recommend re-bidding of the intended purchase, or 3) recommend award of the contract with permission of the agency.
- 4) **North American Products:** Section 125.09(C)(5) permits DAS to establish criteria and procedures that will be used to qualify bidders whose manufactured products, except mined products, are manufactured in other states or in North America and who have significant Ohio economic presence. DAS recognizes products manufactured in other states or territories of the United States as being domestic products. DAS has also adopted the definitions used by the Federal government for Canadian and Mexican products and such are recognized as domestic products.
- 5) **Mined Products:** Ohio’s in-state preference law requires that mined products be mined in Ohio. Law also stipulates that a border state bidder is to be treated in the same manner as an Ohio bidder provided the border state does not apply a preference toward an Ohio

⁴ 48 CFR Ch.1 (10-1-02) Edition, Subpart 25.103

⁵ 48 CFR Ch. 1 (10-1-02 Edition), Subpart 25.25.105(b)(1)

bidder. If a border state bidder is offering mined product, the product must either be mined in Ohio or within the respective border state in which the bidder resides. Indiana, however, has an absolute preference for coal which requires coal to be mined in Indiana. Thus, if an Indiana bidder is offering a mined product, the product must be mined in Ohio to qualify for the preference.

VI. Procedure for Application of Preferences

Step 1: Review for sufficient competition

- One bid response – recommend cancel, re-bid or award (with agency agreement)
- Two or more responses – go to Step 2

Step 2: Examine preference certification documents (Page 2)

- Preference certification not completed – bidder not eligible for preference
- Preference certification partially completed or contains inadvertently obvious mistake – contact bidder for clarification
- Preference certification completed – go to Step 3

Step 3: Evaluate product manufacture location: foreign or domestic

- Offering foreign produced or mined product
- Offering product that meets 50% rule (see definition – “domestic end product”)
- Offering product produced or mined in Canada or Mexico

Step 4: Evaluate bidder type: Ohio, border state, non-Ohio

- Ohio bidder – offering Ohio product or Ohio significant economic presence
- Border state bidder – located in Kentucky, Michigan, Pennsylvania, Indiana, New York
- Non-Ohio bidder – all other bidders

Step 5: Evaluate product compliance with bid specifications

- Product meets bid specifications – proceed with award process
- No product supportive information included, not mandatory – contact bidder
- No product supportive information included, mandatory – bid not responsive

Step 6: Application of preferences & award – mined products (sufficient competition exists)

- Any lowest responsive and responsible bidder offering Ohio mined product – award contract
- Lowest responsive and responsible border state bidder offering same border state mined product (except Indiana) – award contract
- Lowest responsive and responsible Ohio bidder offering non-Ohio mined product – apply 5% preference, award contract to lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range
- Lowest responsive and responsible border state bidder offering non-border state mined product – apply 5% preference, award lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range
- Lowest responsive and responsible non-Ohio/non-border state bidder offering non-Ohio/non-border state mined product – apply 5% preference, award contract to

lowest responsive and responsible Ohio/border state bidder offering Ohio/border state mined product if within 5% range

Step 7: Application of preferences & award – products (sufficient competition exists)

- Any lowest responsive and responsible bidder offering Ohio product – award contract
- Lowest responsive and responsible bidder with significant Ohio economic presence offering domestic / Canada / Mexico product – award contract
- Lowest responsive and responsible border state bidder offering domestic / Canada / Mexico product – award contract
- Lowest responsive and responsible non-Ohio / non-border state bidder offering domestic / Canada / Mexico product – apply 5%, award to lowest responsive and responsible Ohio / border state bidder if within 5% range
- Any lowest responsive and responsible bidder offering foreign product – apply 6%, award foreign product if greater than 6% less costly than lowest responsive and responsible bidder offering Ohio / domestic / Canada / Mexico product

Step 8: Contract award when sufficient competition does not exist

- Requires agency agreement / manager approval
- Product appears on Federal or DAS “Non-Available” lists
- No Ohio / domestic / Canada / Mexico products available in sufficient quantity or of a satisfactory quality

VII. Federal List of Non-Available Articles⁶

Acetylene, black

Agar, bulk

Anise

Antimony, as metal or oxide

Asbestos, amosite, chrysotile & crocidolite

Bananas

Bauxite

Beef, corned & canned

Beef extract

Bephenimu hydroxynapthoate

Bismuth

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films, not printed in the United States and for which domestic editions are not available

Brazil nuts, unroasted

Cadmium, ores and flue dust

Calcium cyanamide

Capers

Cashew nuts

Castor beans and castor oil

Chalk, English

Chestnuts

⁶ 48CRF Ch. 1 (10-1-02 Edition) Subpart 25.104

VII. Federal List of Non-Available Articles, cont'd

Chicle
Chrome ore or chromite
Cinchona bark
Cobalt, in cathodes, rondelles, or other primary ore and metal forms
Cocoa beans
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form
Coffee, raw or green bean
Colchicine alkaloid, raw
Copra
Cork, wood or bark and waste
Cover glass, microscope slide
Crane rail (85-pound per foot)
Cryolite, natural
Dammar gum
Diamonds, industrial, stones and abrasives
Emetine, bulk
Ergot, crude
Erythrityl tetranitrate
Fair linen, altar
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal
Goat and kidskins
Graphite, natural, crystalline, crucible grade
Hand file sets (Swiss pattern)
Handsewing needles
Hemp yarn
Hog bristles for brushes
Hyoscine, bulk
Ipecac, root
Iodine, crude
Kaurigum
Lac
Leather, sheepskin, hair type
Lavendar oil
Manganese
Menthol, natural bulk
Mica
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property)
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts
Nitroguanidine (also known as picrite)
Nux vomica, crude
Oiticica oil
Olive oil
Olives (green), pitted or unpitted, or stuffed in bulk

VII. Federal List of Non-Available Articles, cont'd

Opium, crude
Oranges, mandarin, canned
Petroleum, crude oil, unfinished oils, and finished products
Pine needle oil
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars
Pyrethrum flowers
Quartz crystals
Quebracho
Quinidine
Quinine
Rabbit fur felt
Radium salts, source and special nuclear materials
Rosettes
Rubber, crude and latex
Rutile
Santonin, crude
Secretin
Shellac
Silk, raw and unmanufactured
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available
Spices and herbs, in bulk
Sugars, raw
Swords and scabbards
Talc, block, steatite
Tantalum
Tapioca flour and cassava
Tartar, crude; tartaric acid and cream of tartar in bulk
Tea in bulk
Thread, metallic (gold)
Thyme oil
Tin in bars, blocks and pigs
Triprolidine hydrochloride
Tungsten
Vanilla beans
Wax, carnauba
Wire glass
Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, Angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak
Yarn, 50 Denier rayon

VIII. DAS List of Non-Available Articles

All items appearing on this list require prior approval of the State Purchasing Administrator.

Pineapple, all varieties

VIII. DAS List of Non-Available Articles, Cont'd

Canned Tuna

The following types of contracts are approved by the Controlling Board and are not subject to the requirements of the domestic preferences (Buy America):

Multiple Award Contracts (MAC)

State Term Schedules (STS)

IX. CERTIFICATE FOR DOMESTIC AND OHIO PREFERENCE FORM

Those bidders claiming preference for Domestic Source End Products and/or the Ohio preference, pursuant to Revised Code Sections 125.09 and 125.11 and Administrative Code Section 123:5-1-06 must complete the following information. Bidders who qualify as an "Ohio" bidder (offer an Ohio product or who have significant Ohio economic presence) or who qualify as a Border State bidder are eligible to receive a five percent (5%) preference over non-Ohio/Border state bidders. The state reserves the right to clarify any information during the evaluation process. **BIDDERS MUST COMPLETE THIS CERTIFICATION TO RECEIVE THE PREFERENCE.**

A. DOMESTIC PREFERENCE (BUY AMERICA): [Not applicable to "Excepted Products"]

- Where is each product/services being offered mined, raised, grown, produced or manufactured?
 United States: _____ (State) Canada Mexico (Go to B-1)
 Other: (Specify Country) _____ (Go to A-2)
- End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United States. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued.
 Yes (Go to Section B-1) No (Go to Section A-3)
- The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy America Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.
_____(Item) _____(Country of Origin)
_____(Item) _____(Country of Origin)

A domestic end source product is deemed to be excessively priced if it exceeds the cost of the foreign product by more than 6%. Pursuant to FAR, Part 25, the state of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The contractor, their subcontractor(s) and any agent of the contractor or subcontractor must not acquire any supplies or services originating from sources within, or that were located in or transported from or through Cuba, Iran, Iraq, Libya, North Korea, Sudan Territory of Afghanistan controlled by the Taliban, or Serbia (excluding the territory of Kosovo).

B. OHIO PREFERENCE (BUY OHIO):

- The products/services being offered are raised, grown, produced, mined or manufactured in Ohio. 
 Yes (Go to C) No (Go to B-2)
- Bidder has significant economic presence within the State of Ohio. Yes (Answer a, b, c, d below) No (Go to B-3)
 - Bidder has paid the required taxes due the State of Ohio Yes No
 - Bidder is registered with the Ohio Secretary of State
 Yes (Charter/Registration No.: _____) No
Questions regarding registration should be directed to (614) 466-3910 or visit their web site at:
<http://www.sos.state.oh.us/>
 - Bidder has ten or more employees based in Ohio or border state. Yes No (Go to B-2d)
 - Bidder has seventy-five percent or more employees based in Ohio or border state. Yes No (Go to B-3)
- Border state bidder:
 Yes (Specify which state then go to B-2c): KY MI NY PA IN No (Go to B-4)
- Border state bidder: mined products mined in respective border state Yes No Not Applicable

C. E.D.G.E. DESIGNATION

Bidder is certified E.D.G.E. business Yes No

For information on E.D.G.E. designation, please visit the DAS Equal Opportunity Division website at:
<http://www.state.oh.us/das/Eod/edge/Index.htm>

D. DECLARATION REGARDING MATERIAL ASSISTANCE/NON-ASSISTANCE TO A TERRORIST ORGANIZATION

The Bidder being awarded the Contract must complete the [Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization \(DMA\)](#) form published by the Ohio Department of Public Safety/Ohio Homeland Security ([click on link to obtain form](#)). This form is to certify that the contractor does not provide material assistance to any organization on the United States, Department of State's terrorist exclusion list. The completion of this form is considered a Condition Precedent for Execution of a Contract. Failure to complete the certification may result in the bidder being deemed not responsive and/or may invalidate any Contract award. If not submitted with the bid response, the bidder will have seven (7) calendar days, after notification, to submit the completed form.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Hierarchy of Procurement Methodologies
POLICY/PROCEDURE NO.: PUR-04
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services to meet the mission of the agency. A variety of procurement methods are available to agencies that include:

- ◆ Intra-agency purchases
- ◆ Sheltered work centers
- ◆ Visually Impaired
- ◆ DAS Contracts
- ◆ Direct purchase authority

Although these various methods are available to agencies, they may not, by law, randomly select which method to use to make the purchase.

II. Scope

Prior to making any purchase, agencies must give first consideration to the following state sources :

- ◆ Ohio Penal Industries (OPI)
- ◆ Central Warehouse/Pharmacy Services (OSS)
- ◆ Office of Procurement from Community Rehabilitation Programs (DAS)
- ◆ Rehabilitation Services Commission (RSC)
- ◆ DAS Term Contracts

Agencies are required by law to make purchases from these entities before making a purchase from any other source. If items are not available from these organizations, agencies must obtain a written waiver and then may then exercise their direct purchase authority unless the value of the purchase for supplies exceeds \$33,500 or value of services exceeds \$67,000. For purchases above these limits, agencies must make the

purchase from or through DAS, Office of Procurement Services, State Purchasing Unit. If State Purchasing determines that it is not practical or advantageous to make the purchase, the agency will be issued a Release and Permit to make the purchase under their direct authority. If an agency's direct purchases exceed their cumulative annual threshold (\$50,000/\$75,000) in a fiscal year, the agency must seek approval from the Controlling Board to make the purchase, which also requires a Release & Permit from State Purchasing. This Policy and Procedure will describe the various methods and the order which must be followed to complete the purchase.

III. Policy

Procurement Services – State Purchasing will review all purchase requests to ensure that the agency has followed the order of priority described in this Policy and Procedure. A purchase request for supplies or services offered by any of the mandatory sources will not be processed unless such is accompanied by a written waiver from the respective mandatory source.

IV. Procedures for Initiating a Purchase Request

- A. State Sources.** Law has established various state sources to furnish certain supplies and services to state agencies. Whenever the required supply or service is available from a state source, the agency must make the purchase from the respective source or obtain a waiver to make the purchase from another source. If the agency proceeds to make the purchase without obtaining a waiver, the purchase will be considered invalid and the person making the purchase could be held personally responsible to reimburse the state for the expenditure.

Special Note: Some products or services offered by OPI, OPCRP (State Use), DMH/OSS and RSC may also appear on a DAS term contract. Agencies are required to make purchases from OPI, OPCRP, DMH/OSS and RSC prior to using a DAS term contract.

Examples of the types of supplies and services offered by state sources include, but are not limited to:

- Ohio Penal Industries (OPI)
 - Office Panel Systems
 - Office Furniture
 - Files

- Community Rehabilitation Programs (Previously, State Use Program)
 - Housekeeping/Janitorial Services
 - Pens & Pencils
 - Printed Clothing

- Central Warehouse/Pharmacy Services (Mandatory for institutional agencies)
 - Foods
 - Pharmaceuticals
 - Laboratory Testing Services

- Rehabilitation Services Commission (RSC)
 - Beverage Vending Services
 - Food Vending Services
 - Cafeteria Services

- DAS Term Contracts (State Purchasing / State Printing)
 - Copier Equipment / Paper
 - Vehicles / Fuel / Tires
 - Hardware Supplies / Equipment

Agencies may make purchases from any state sources without delay and without any dollar limitation provided respective funding is available. Purchases from state sources are not counted against the agency's cumulative annual threshold.

B. Purchases from or through Procurement Services – State Purchasing . When the value of the purchase for supplies exceeds \$33,500 or services exceed \$67,000, the agency must forward the purchase request to State Purchasing. If it is determined that the request can be made through State Purchasing, the agency will be so notified and a determination made as to which purchasing method will be used to establish the contract. State Purchasing utilizes the following methods to establish contracts (in order of consideration):

- Competitive Sealed Bid (Authorized by ORC)
 - Invitation to Bid / Invitation to Bid by Reverse Auction
 - Known requirement / clearly defined specifications
 - Price driven
 - Mandatory use contract

- Competitive Sealed Proposal (Authorized by ORC)
 - Request for Proposal
 - Looking for best solution
 - Price secondary
 - Mandatory use contract

- Multiple Award Contract (Authorized by Controlling Board)
 - Utilizes Invitation to Bid process
 - Multiple awardees for similar or like items/services
 - Unless otherwise stated, optional use contracts

- State Term Schedules (Authorized by Controlling Board)
 - Contracts with manufacturers/agents only
 - Manufacturers may name authorized dealers

- Pricing based upon federal FSS (GSA) or better
- Contain maximum order limits, requires pre-approval to exceed
- Optional use contracts

Once a contract is established, the agency may make purchases as needs arise and in any volume provided sufficient funding is available to support the purchase. Purchases from these contracts do not affect the agency annual cumulative threshold nor do these contracts require approval from the Controlling Board, except for release of capital funds. Typically, a minimum of 120 calendar days is required for these processes, but additional time may be necessary depending upon the complexity of the project. Requests to expedite the process will be handled on a case-by-case basis.

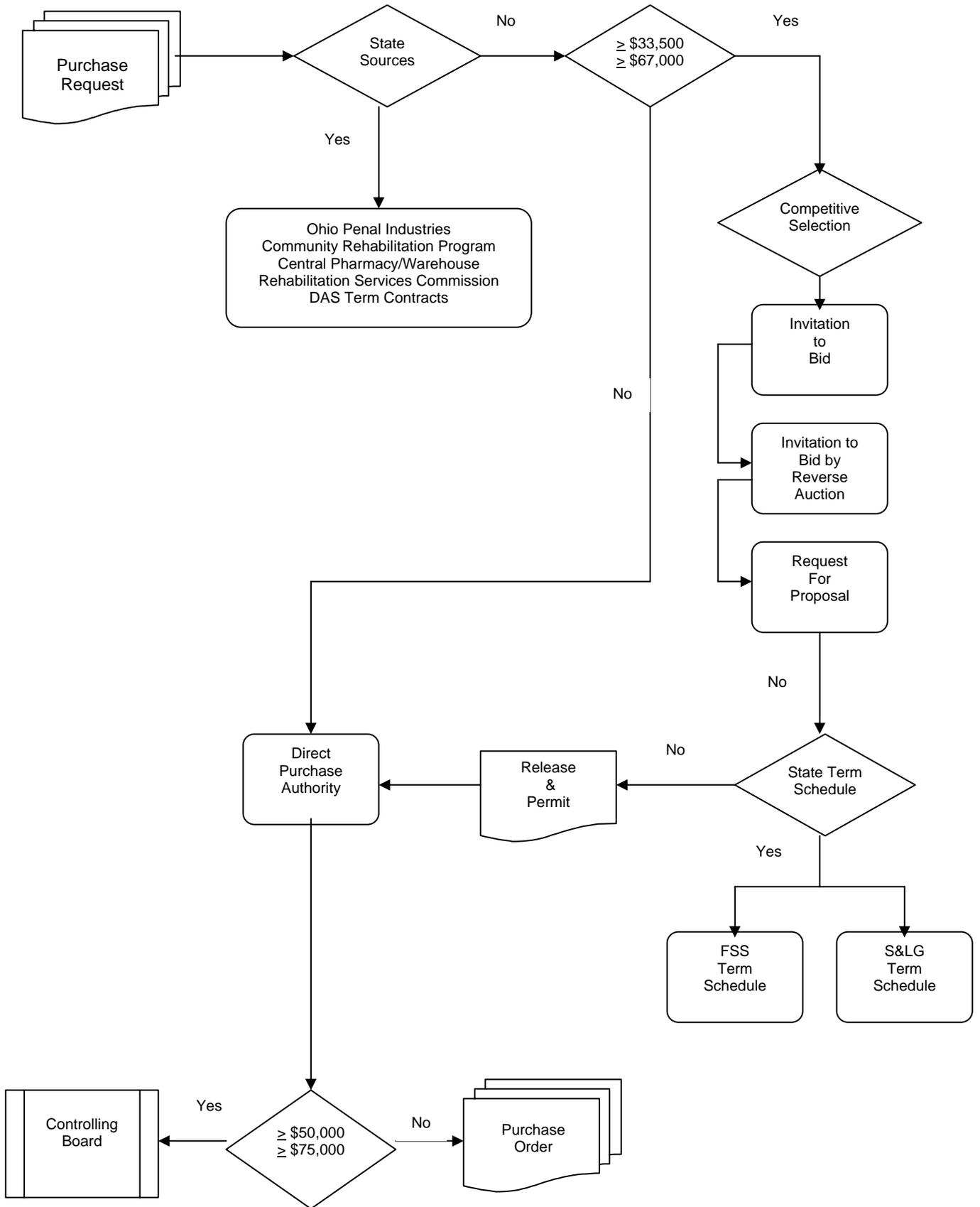
C. Release and Permit. When State Purchasing determines that it is not possible or advantageous to establish the contract, the agency will be granted a Release and Permit to make the purchase under their direct purchase authority. The agency must use a competitive process to make the purchase. If the value of the purchase will cause the agency to exceed its cumulative annual threshold (\$50,000/\$75,000) the agency must seek approval from the Controlling Board to enter into the contract. To avoid unnecessary delays or the potential for breach of contract, the agency should discuss the purchase with State Purchasing prior to making a commitment with the supplier as the Release and Permit may be denied in favor of using a different method to make the purchase.

D. Direct Purchase Authority. Law permits a state agency to make purchases of supplies with a value of \$33,500 or less, and services with a value of \$67,000 or less when such supplies or services are not available from any of the mandatory sources described in this Policy and Procedure. When an agency exercises its direct purchase authority, it must follow the competitive process outlined in all of the following:

- DAS Directive maintained by DAS, Office of Chief Counsel
- State Procurement Handbook maintained by Office of Procurement Services
- Policies and Procedures of the Office of Procurement Services

If an agency fails to follow the processes outlined in these documents, the purchase could be deemed to be invalid and could leave the person who made the purchase, financially liable to reimburse the State for the procurement. The DAS Directive is available online at <http://www.das.ohio.gov/asd/Legpage.htm#Directives> and the other documents are available from the State Procurement Website at www.ohio.gov/procure, click on training and reference materials.

Procurement Method Determination Flow Chart



State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Contracting Process Determination
POLICY/PROCEDURE NO.: PUR-05
DATE ISSUED: August 3, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Each fiscal year (July 1 to June 30) state agencies spend in excess of \$2 billion for supplies and services that are necessary for the daily operation of their agency. Law provides that agencies may procure supplies up to \$33,500 and services up to \$67,000 using their direct purchase authority. For purchases above these limits, agencies must make the purchase from or through the Department of Administrative Services, Office of Procurement Services - State Purchasing.

State Purchasing is responsible to establish an agreement (“the contract”) between the contractor and DAS to acquire the supplies or services requested by the agency. This contract serves as an agreement between DAS and the contractor and includes specifications, terms, conditions and pricing for the respective supplies or services. The agency will make the purchase by procurement card, purchase order or other encumbering document referencing the contract agreement. This document authorizes the contractor to deliver the supplies or perform the services at an agreed upon date and time. Once delivery and acceptance have occurred, the agency will then pay the contractor in accordance with the agreement.

When determining which type of contract to establish, State Purchasing will consider various factors such as; time constraints, potential for repetitive purchases by one or more agencies, standardization of specifications and ability of suppliers to meet the needs of the state. Purchases an agency makes from a DAS contract are not subject to further approval by the Controlling Board unless capital funds are be used. In addition, purchases from DAS contracts are not applied toward the agency’s cumulative annual threshold (\$50,000 / \$75,000) established by the Office of Budget & Management.

II. Scope

This Policy and Procedure will explain the contracting processes and the decision processes utilized by State Purchasing to determine which type of contract will best meet the needs of the State.

III. Policy

State Purchasing will review all purchase requests to determine the most cost-effective and efficient method to establish the contract. In making this determination, State Purchasing will consider such things as, but not limited to:

- ◆ One or more agencies may require the supplies or services
- ◆ Supplies or services will be utilized on a routine or sporadic basis
- ◆ Specifications must reflect current technology to maximize competition
- ◆ Combining needs to take advantage of volume discounts

First consideration will be given to using competitive selection to establish contracts. If it is determined that use of competitive selection will not be in the best interest of the State, State Purchasing will utilize other methods as appropriate.

IV. Definitions

“*Agency Specific Contract (ASC)*” means a mandatory use term contract established with one or more contractor(s) to provide specific supplies or services required by one state agency. ASC contracts may only be used by the named state agency.

“*Competitive Selection*” means any of the following procedures for making purchases:

- ◆ Competitive sealed bidding under section 125.07 of the Revised Code; or
- ◆ Competitive sealed proposals under section 125.071 of the Revised code; or
- ◆ Reverse auctions under section 125.072 of the Revised Code.

“*Controlling Board*” means a legislative body consisting of a President appointed by the Governor and legislators appointed by the House and Senate to review and approve contracts established by an agency under their direct purchase authority, the value of which exceeds their cumulative annual threshold or when capital funds are used to make the purchase.

“*General Distribution Contract (GDC)*” means a mandatory use term contract with one or more contractor(s) to provide specific supplies or services routinely required by state agencies over an extended period of time. Generally, GDC contracts are made available to all state agencies and Cooperative Purchasing members.

“*Limited Distribution Contract (LDC)*” means a mandatory use term contract established with one or more contractor(s) to provide specific supplies or services to specific state agencies. LDC contracts may be used by only the named agencies.

“*Multiple Award Contract (MAC)*” means a mandatory term contract established with multiple contractors for the same or similar item(s). MAC’s are mandatory contracts unless otherwise noted in the contract.

“One Time Bid” means a contract for a specific item(s) required by a specific agency for delivery at a pre-established time. Once delivery and acceptance are completed the contract is closed.

“Optional Use Term Contract” means a requirements contract for supplies or services with one or more contractors offering the same or similar item(s). The state may not be bound to procure all required needs from the contractor(s).

“State Term Schedules” means a contract for the same or similar item(s) negotiated with manufacturers offering their federal FSS agreements or with manufacturers offering their best pricing for similarly situated customers. STS’s are optional use term contracts.

“Term Contract” means a requirements contract for the routine purchase of supplies or services over a fixed period of time.

V. Procedures for Requesting a DAS Contract

1) The Purchase Request

The agency forwards the Purchase Request to State Purchasing using a memorandum or Requisition (ADM-0500), signed by an authorized representative of the agency. The signed document authorizes State Purchasing (DAS) to let a contract on behalf of the agency. State Purchasing will not proceed with any verbal purchase request.

The purchase request may include detailed specifications for the supplies or services, delivery times and locations, billing and invoicing information and any other special requirements of the agency. The purchase request will be time/date stamped upon receipt at State Purchasing and will be forwarded to the appropriate team manager. Team managers will meet weekly to review all purchase requests and re-bids/renewals of existing contracts for determination of type of contract and procurement method.

If managers concur that it is not practical or advantageous for State Purchasing to make the purchase, the agency will be granted a Release and Permit to make the purchase under their direct purchase authority or will be re-directed to the appropriate state agency (i.e.; State Architect, Office of Information Technology, Community Rehabilitation Programs, Ohio Penal Industries, etc.).

2) Procurement Method and Type of Contract

State Purchasing managers will review the purchase request to determine which type of contract will be most advantageous and which process must be used to establish the contract. Their recommendations will be reviewed and approved by the State Purchasing Contracts Manager or Administrator, in his absence. The types of contracts and respective bidding processes include:

◆ One Time Bid (Spot Purchase Bid)	}	<i>Competitive Selection</i>
◆ Agency Specific Term Contract	}	<i>Competitive Selection</i>
◆ Limited Distribution Term contract	}	<i>Competitive Selection</i>
◆ General Distribution Term Contract	}	<i>Competitive Selection</i>
◆ Multiple Award Contract	}	<i>Controlling Board Approval</i>
◆ State Term Schedule	}	<i>Controlling Board Approval</i>

Factors to be considered when determining the type of contract include, but are not limited to:

- ◆ Dollar value per fiscal year is estimated to exceed direct purchase limits of \$33,500 for supplies or \$67,000 for services or cumulative annual threshold of \$50,000/\$75,000.
- ◆ The agency may make sporadic purchases (1-2 times per year), or more routine purchases (monthly, quarterly, etc.).
- ◆ The length of time the agency require the supplies or services.
- ◆ Potential that other agencies have a need for the supplies or services.
- ◆ Type of industry providing the supplies or services (i.e. stocking distributors, brokers, etc.).
- ◆ Pricing stability (firm-fixed price or flexible pricing).
- ◆ Availability of competition (multiple sources, specialized sources, sole source, etc.).
- ◆ Homeland security and/or emergency requirements

These and other related factors are to be used to determine the most appropriate type of contract that will best meet the need. Once the determination as to the type of contract has been made, the manager will assign the purchase to an analyst. The analyst may prepare the bidding documents using the specifications furnished by the agency as a baseline. The analyst will be responsible to conduct necessary research to ensure that specifications reflect the most current technology and that such specifications are not restrictive. The final version of bidding documents will be reviewed and approved by the manager, or contracts manager in his/her absence, prior to issuance to bidders and posting on the State Procurement website.

Typically, one time bids require a minimum of forty-five (45) calendar days to complete the process. Term contracts require a minimum of one hundred twenty (120) days for completion. Requests to expedite the process will be handled on a case-by-case basis. Once a contract has been established, agencies may purchase items from the contract at any time and in any volume thus eliminating process delays and requirements for maintaining local inventories to offset process delays.

3) Set Aside and EDGE Considerations

State Purchasing and/or the DAS/Equal Opportunity Division will review purchase requests and/or existing term contracts to discuss those that may be good candidates for set aside to certified minority business enterprises under the state's set aside program or that may provide business opportunities for EDGE certified vendors.

4) Evaluation and Award Process

The analyst will follow established procedures for development of bid documents, advertising bid documents, evaluating bid responses and awarding contracts. When competitive selection processes are utilized, contracts will be awarded to the lowest responsive and responsible bidder on Invitations to Bid or to the most advantageous offeror on Requests for Proposals. When applicable, consideration will also be given to the domestic and in-state preferences.

5) Signing Contracts

All DAS contracts established by State Purchasing will bear the signature of the Director of Administrative Services. The Director may delegate signature authority to the Division Deputy Director, the Procurement Services Administrator, the State Purchasing Contracts Manager and the unit Procurement Manager to enter into contracts on behalf of the Department. All management level employees for the Office of Procurement Services will have an active professional certification from the Universal Public Purchasing Certification Council (UPPCC) of Certified Public Purchasing Officer (CPPO) to qualify for delegated signature authority from the Director. Levels of signature authority will be at the discretion of the Director of DAS.

6) Contract Renewals for a New Biennium

No contract may extend beyond June 30 of the current biennium. When the duration of a contract crosses a biennium, the analyst will prepare an amendment to the contract to affirmatively renew the contract for the balance of its term in the new biennium. All biennial contract renewals should be completed at least thirty days prior to the end of the fiscal biennium.

7) Decision to Renew or Re-bid

Generally, term contracts will contain a clause that will permit unilateral renewal for a minimum of thirty calendar days and/or renewal, by mutual agreement of all parties, for up to twenty-four months. All contract renewals are subject to approval of the Contracts Manager and/or the Administrator. In deciding whether to renew or re-bid a term contract, factors to consider include, but are not limited to:

- Do specifications of the existing contract reflect current technology?
- Does the existing contract meet the needs of the agency(ies)?
- Is pricing for the existing contract comparable with current market?
- Is there sufficient time to complete a rebid?
- Is there a sufficient number of new bidders to warrant a rebid?
- Is it in the best interest of the state to renew or rebid?

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: **Selecting Contracts for Set Aside**
POLICY/PROCEDURE NO.: **PUR-006**
DATE ISSUED: **August 3, 2001**
DATE REVISED: **February 16, 2007**
RESPONSIBLE UNIT: **Office of Procurement Services**

I. Background

The Office of Procurement Services/State Purchasing (“State Purchasing”) is responsible to establish contracts for a variety of supplies and services that are purchased routinely by state agencies. These contracts are established using either competitive selection or with approval of the state’s Controlling Board. Ohio law requires the Department of Administrative Services to set aside approximately fifteen percent (15%) of the aggregate value of all purchases for participation by minority business enterprises who have been certified by the DAS/Equal Opportunity Division. With respect to State Purchasing contracts, only those contracts that have been established through competitive selection are subject to set aside.

II. Scope

State Purchasing maintains several types of contracts that are established through competitive selection:

- ◆ One Time Bid (Spot Purchase)
- ◆ General Distribution Term Contracts
- ◆ Limited Distribution Term Contracts
- ◆ Agency Specific Term Contracts
- ◆ Requests for Proposal

The final decision as to which contracts will be set aside lies with the Administrator of the Office of Procurement Services and/or the State Purchasing Contracts Manager. Agencies will be given an opportunity to have input into the final set aside determination to assist them with meeting their set aside goals. State Purchasing and the Equal Opportunity Division will review the term contracts annually and determine which contracts are candidates for set aside. This policy and procedure will describe the process used to make these selections.

III. Policy

Prior to establishing a contract through competitive selection, consideration will be given to setting aside the purchase for participation by certified minority business enterprises only. State Purchasing will endeavor to select contracts, the aggregate value of which is estimated at 15% of the total value of all contracts, for set aside.

IV. Definitions

“*Competitive Selection*” means any of the following procedures for making purchases:

- ◆ Competitive sealed bidding under section 125.07 of the Revised Code;
- ◆ Competitive sealed proposals under section 125.071 of the Revised Code;
- ◆ Reverse auctions under section 125.072 of the Revised Code.

“*Minority Business Enterprise*” means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of this state and are members of one of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals.

V. Considerations for Selecting a Purchase for Set Aside

The agency may request that the intended purchase be set aside so as to apply toward their 15% goal, which will generally be honored. If an agency has not requested that the intended purchase be set aside, State Purchasing may elect to set aside the purchase to meet the 15% goal for DAS. Whenever an intended purchase is set aside and successfully awarded to a certified MBE, the agency may also claim purchases made under the contract as set aside purchases.

Factors State Purchasing may consider when selecting an intended purchase for set aside include, but are not limited to:

- ◆ There are sufficient qualified MBE’s available to bid on the purchase. Two or more qualified bidders must be available to foster competition. The analyst or purchasing assistant will prepare a list of certified MBE’s from the list of certified MBE’s maintained by EOD.
- ◆ The size and nature of the purchase may not be conducive to the MBE community registered for the product or service area. For example, expected volume of purchase activity requires distribution network that potential MBE community cannot provide.
- ◆ A significant number of other purchase requests for similar products or services have been selected for set aside. Issuing the new request to the open market will prevent a potential of repeatedly selecting entire categories of products or services for set aside.

If set aside, only those bids received from certified MBE’s will be opened following the standard process for bid opening.

A decision to not set aside the purchase must be approved by the State Purchasing Contracts Manager or the Administrator of Procurement Services. The agency will be advised of the final determination and the reasons supporting the determination prior to issuance of the bidding documents.

VI. Procedures

1) One Time Purchases & New Term Contracts. The agency will forward their purchase request via the ADM-0500 Requisition (for One Time Purchases) or a memorandum (for term contracts). Either of these documents must be signed by a representative of the agency who is authorized to commit the agency to the purchase. These documents will also include product or service specifications, funding information, delivery information, etc. relative to the purchase. If the agency has requested the purchase be set aside, the purchasing assistant will prepare a list of certified MBE vendors who have registered for the respective supplies or services. The contract analyst will then discuss potential for set aside with the manager. If determined that the purchase is to be set aside, the analyst will proceed with preparation of the bidding documents in accordance with standard processes. If determined that the purchase will not be set aside, the manager will seek approval from the Contracts Manager or Administrator to bid the purchase to the open market.

2) Existing Term Contracts. Not later than January 1st of the current fiscal year, a listing of all active term contracts, that will expire in the approaching fiscal year, will be prepared. The list will not include contracts for fuel or mailing services or any other product category that has been exempted from set aside consideration by EOD Coordinator. A determination will be made as to which contracts will be renewed and which will be candidates for set aside in the approaching fiscal year. The list of active term contracts selected for set aside will be forwarded to EOD for their review and input.

3) Set Aside Report. The managers will prepare a report for the Contracts Manager indicating those contracts to be bid open market and those contracts to be bid set aside during the approaching fiscal year. Every effort will be given to meeting the 15% goal established by law. Precautions will be taken to avoid setting aside certain categories of supplies or services repeatedly. Tasks to be performed and questions to consider in preparing this report include, but are not limited to:

- ◆ Make complete copy of the term contract to include all addenda
- ◆ Prepare list of certified MBE's for each contract using the EOD database
- ◆ Note annual dollar value of contract
- ◆ Note if contract is currently open, set aside or partial set aside
- ◆ Note if current contractor(s) are open market or MBE companies
- ◆ Note if contract is broker based or stocking distributor based
- ◆ Note if contract has been set aside previously, and the number of times set aside
- ◆ Note past contract issues, if any (i.e. CTV's filed, informal performance issues, etc.)
- ◆ Note bidder disqualification and reason for disqualification
- ◆ Note required specification changes for next bid
- ◆ Note issues that could limit MBE participation (i.e. contract size, stocking distributors, etc.)
- ◆ Note if contract may be renewed for the next fiscal year
- ◆ Note if COOP contract
- ◆ Note if agency specific, if agency is agreeable to set aside
- ◆ Note if contract is to be cancelled and not renewed
- ◆ Note any additional information that may be helpful
- ◆ Number of qualified MBE's available to bid (minimum 2, 4 preferred)
- ◆ Note impact upon state if set aside (i.e. price competitive)
- ◆ Note impact upon DAS and agency goals if not set aside

The Contracts Manager will prepare a final report indicating the percentages of contracts to be bid open market and those to be bid set aside during the approaching fiscal year to include the estimated dollar

values and respective percentages. Every effort will be made to set aside a minimum of 15% of the intended purchases for the approaching fiscal year. Adjustments will be made to the lists, as necessary, to attain the 15% goal set forth by law.

The final report will be forwarded to Administrator and Deputy Director of GSD for review and approval. Once approved, the report will be forwarded to the Director of DAS no later than February 28th of the current fiscal year. The approved listing will then be distributed to managers and contract analysts. The list will also be distributed to EOD and other interested parties.

VII. Adjustments to the Approved Listing

During the course of the approaching fiscal year it may be necessary to make adjustments to the approved list. Some examples include a change of status from MBE to open market or vice-versa, new contract offerings or cancellation of the contract. State Purchasing may select other contracts for set aside to offset any reductions so as to maintain the minimum 15% goal as required by law.

VIII. Recruiting Minority Businesses

Law places the responsibility for recruitment and certification of minority business enterprises with the Equal Opportunity Division of DAS. State Purchasing will utilize the list of certified MBE's when determining which contracts will be set aside. If State Purchasing ascertains that insufficient MBE's exist to support setting aside of particular contracts to meet the 15% goal, notification will be forwarded to EOD of such situation and that State Purchasing will be unable to meet the goal established by law. State Purchasing will place a request that EOD either recruit and certify additional MBE's for respective product/service areas or exempt the category(ies) of product/services from the overall volume of purchases.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: **Communications & Protest Procedures**
POLICY/PROCEDURE NO.: **PUR-007**
DATE ISSUED: **August 3, 2001**
DATE REVISED: **October 22, 2007**
RESPONSIBLE UNIT: **Office of Procurement Services**

I. Background

Law provides that the Department of Administrative Services may procure required supplies and services on behalf of state agencies. The preferred method for procuring supplies and services is through competitive selection (competitive sealed bid, competitive sealed proposal or reverse auction). Agency requirements are listed in formal bidding documents. Notice of the intended procurement is then listed in a bid bulletin that is made available to interested bidders electronically. Sealed responses are publicly opened at the time and date specified on the bidding document. Responses are evaluated and contracts awarded to the lowest responsive and responsible bidder for bids, and to the most advantageous offeror for proposals and reverse auctions.

II. Scope

Sound procurement practice requires effective communication to ensure that the state's needs are met, that all bidders are treated equally and fairly, and that specifications and bidding documents accurately portray the needs of the customer agency. Communications may take place among all parties involved with the procurement; e.g. the agency, the vendor community and the procurement office.

The right to protest is another important part of an effective procurement program. At any point in the process, bidders may raise questions on the intended purchase, the bidding process, bid specifications, evaluation process or contract award process. A bidder or contractor who is not in agreement with the competitive process may file a protest with DAS, citing areas of concern. The protest should be submitted in writing and filed within a reasonable number of days after the person knows or should have known the facts relevant to the issue under protest.

The following procedures have been developed to provide direction to staff of the Office of Procurement Services when communicating with bidders and/or vendors and for handling protests.

III. Policy

It is the Policy of the Office of Procurement Services to maintain open lines of communication, except when doing so may violate confidential protections set forth in law. Efforts will be made to involve all parties to the contract in communications relative to any bid or contract established by Procurement Services.

IV. Procedures for Communications

A) Prior to Issuance of the Bid

1. Informal conversations may occur between the Office of Procurement Services, State Purchasing, the customer agency and the vendor community during the development of bid specifications. Such informal conversations may transpire over the telephone, through electronic e-mail, person-to-person, etc. These discussions are necessary to conduct research on products or services to be purchased, to ascertain if resulting specifications would be restrictive, to discuss changes to an existing contract in preparation for the new bid, etc. Information gleaned from these discussions will be used to develop final bid specifications to insure that agency needs are met.
2. State Purchasing may conduct a formal pre-bid conference as part of initial efforts to develop specifications for the required products or services. Pre-bid conferences are open to all companies who may have interest in supplying the required products or services to the State. Notice of such pre-bid conferences will be given to all vendors who have registered with the Office of Procurement Services for the respective products or services area or to any vendor known to provide the required products or services at the determination of State Purchasing. A record of such proceedings will be maintained by the Office and will become a part of the bid file.
3. State Purchasing will honor reasonable requests from the supplier community to visit the office and personally discuss the products or services to be offered to the State. **Personal visits are by appointment only.** Acceptance of unannounced visits will be at the discretion of the respective State Purchasing staff person.

B) After Issuance of the Bid – Prior to Public Opening

1. State Purchasing may determine that it is necessary to meet with potential bidders to discuss the requirements of the bid. A formal bid conference will be held for such discussions. Notice of the conference will be included in the bid documents and made available to all bidders

registered with Procurement Services or known to provide the required products or services at the determination of State Purchasing. A record of the conference and all proceedings will be maintained as part of the bid file.

2. If a bidder discovers an inconsistency, error or omission in the bid, the bidder should request clarification from State Purchasing using the address listed in the bid. A request for clarification must be placed through the State Procurement Website as set forth in the bid document. Requests for clarification must be received by State Purchasing within the minimum number of days as indicated in the bid document prior to the scheduled date and time of bid opening. Bidders who attempt to seek clarification verbally will be directed to the State Procurement Website. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with the customer agency(ies) or any other agency of the State to discuss the bid may result in the bidder being deemed not responsive.
3. If a request for clarification results in a need to alter any part of the bid document, State Purchasing will issue an addendum to the bid to advise interested bidders of the change. The addendum will be posted on the State Purchasing web site and be available to all bidders registered with Procurement Services for the respective product or service area and to any other bidder known to have requested a copy of the bid documents.

C) After Public Opening of the Bid – During Evaluation of Responses

1. Invitations to Bid, Requests for Proposals and Reverse Auction Qualification Summaries will be opened publicly in the presence of a representative from the Auditor of State's office. Responses for Invitations to Bid will be made available for review by the general public at the time of opening. Once those in attendance have reviewed the bid responses, the formal evaluation process will begin. For Requests for Proposals and Reverse Auction Qualification Summaries only the names of the responding bidders will be disclosed. To protect the integrity of the evaluation and award process, responses will not be available for public viewing until after the contract has been awarded. Bidders may not contact State Purchasing, the customer agency or any member of the State to discuss their response or to discuss any of the other responses. Bidders who attempt to make such contacts may be deemed not responsive.
2. During the evaluation process, unless clarifying information is requested by State Purchasing as part of the evaluation process, any attempt on the part of the bidder, the bidder's agent(s), or any party

representing the bidder, to submit correspondence that is determined by Procurement Services to be an attempt to compromise the impartiality of the evaluation, or any attempt on the part of the bidder to communicate with any member of the State regarding the evaluation process may be grounds for immediate disqualification of the bidder.

D) After the Award

1. All awards will be posted on the Procurement Services web site.
2. Once the evaluation process has been completed and a contract awarded, the response/contract file will be available for public viewing. A bidder may seek clarification regarding the evaluation and award process by contacting State Purchasing at the email address listed in the bid. Such contacts may be made in writing by postal letter or by e-mail. A bidder who requests verbal clarification will be directed to place the request in writing. No other form of communication is acceptable.

IV. Protest Procedures

A) Right to Protest

1. Any bidder who is not in agreement with the competitive bidding process may file a protest. If protesting a bid (ITB, RFP or RAQS), the protest must be filed prior to the scheduled date and time of bid opening. If protesting a contract award, the protest must be filed within fourteen (14) calendar days after the bidder knows or should have known of the facts giving rise to the protest. The protest is to be filed with the Administrator of Procurement Services.
2. In the event of a timely filing of a protest, the Administrator will review the bid file and make a determination as to the validity of the protest. If the bid is under evaluation and the Administrator determines that the protest merits further investigation, proceedings of the evaluation of the bid or awarding of the contract will be stayed until a final decision is made, unless the Administrator determines that completing the evaluation or award process is necessary to protect the interests of the state.
3. The Administrator has sole authority, prior to commencement of an action in a court of law, to resolve and settle a protest filed by a bidder or contractor. This authority will be exercised pursuant to relevant sections of the Ohio Revised and Administrative Codes. The Administrator, with assistance from the DAS Office of Chief Counsel, will issue a decision in writing stating the position of the Department and reasons for action taken. The decision of the Administrator shall

be final and conclusive unless any person adversely affected by the decision commences action in a court of law. When deemed necessary, the Administrator will discuss the issues and the proposed resolution with the Division Deputy Director prior to issuance of the finding.

B) Legal Contacts

1. Staff should not talk with any person identifying himself or herself as an attorney or legal representative of a bidder or contractor. Such calls are to be directed to DAS, Office of the Chief Counsel at (614) 644-1773. The Administrator is also to be advised of any such contacts. When deemed necessary, the Administrator will advise the Division Deputy Director of such calls.
2. Attorneys are bound by a code of professional responsibility not to talk with parties that are represented by counsel. State employees are acting as an agent for the state, a party that is represented by counsel. An attorney, whether retained by a bidder or contractor or representing another party on behalf of the bidder or contractor, should not continue any conversation with a buyer/analyst or other non-legal employee of the state of Ohio.

C) Classification of Protests

1. Level 1 Protest (Pre-Bid Opening/Pre-contract award)
 - a) Purchasing staff shall document all verbal conversations, including:
 - Bid number
 - Name of person
 - Company represented
 - Date and time of call/conversation
 - Content of conversation to include response
 - Any discussion of bid evaluation or attempts to do soStaff shall create a memo to file outlining details of the call.
 - b) Bidder must submit written protest immediately.
 - c) Any threat of legal action is to be treated as a promise of legal action. DAS counsel and the Administrator are to be notified immediately. All further communications with bidder shall cease unless directed otherwise by DAS counsel or the Administrator. The protest is to be considered a Level 3 Protest.
 - d) Any contact from a person claiming to be a legal representative of a bidder/contractor shall be communicated to DAS counsel and the Administrator immediately. At no time is the buyer/analyst or other staff to discuss issues relative to a bid evaluation or contract award

with an attorney or other legal representative unless directed to do so by DAS counsel or the Administrator. The caller is to be provided with the phone number of DAS counsel (614) 644-1773.

2. Level 2 Protest (Post-Contract Award)
 - a) Purchasing staff shall document all verbal conversations, including:
 - Contract number
 - Name of person
 - Company representing
 - Date and time of call/conversation
 - Detailed content of call/conversationStaff shall create a memo to file outlining details of the call.
 - b) Written protests must be received within fourteen (14) calendar days.
 - c) Written response will be provided within a reasonable time.
 - d) Upon receipt of written request, buyer/analyst will prepare a synopsis of the bid and award process. The synopsis will include, but not be limited to: bid evaluation and award, names of responding bidders, notations of conversations with any of the bidders or awardees and any other related information.
 - e) Upon receipt of a written protest, buyers/analysts or other staff are to discontinue any further discussions with any bidders or contractors relative to the protest unless directed otherwise.
3. Level 3 Protest (Attorney involvement/legal action threatened).
 - a) Upon receipt of a verbal or written communication, notification or threat thereof, from any attorney, of pending legal action, staff are to advise the Administrator and DAS counsel **IMMEDIATELY**. The customer agency is to be notified and advised of the status and instructed to forward any further inquiries about the bid/contract to State Purchasing. The Administrator will advise the Managers of any such protest.
 - b) All communications with non-state employees involving any aspect of the bid/contract are to be directed to DAS counsel for response. In absence of counsel, such request may be forwarded to the Administrator.
 - c) Bid/contract files and related documents are to be retrieved and examined by the buyer/analyst and supervisor/manager, organized by dates of activity, and secured. Any public records requests are to

be approved by DAS counsel. When copies of documents are requested through a public records request, four (4) sets of all such documents shall be prepared (1 for requestor, 1 for DAS counsel and 1 for DAS Office of Communications and 1 for State Purchasing file).

- d) If litigation is anticipated, or acted upon, records for such litigation are not public records pursuant to statutory exceptions. Further, correspondence from legal counsel may carry attorney-client privilege. At no time are any written documents to be released without expressed written approval from DAS counsel and the Administrator.
- e) Requests for information from any state agency or staff person who is not an employee of Procurement Services are to be forwarded to DAS counsel or the Administrator.
- f) At no time are any Procurement Services staff to respond, or attempt to respond, to inquiries from legislators and/or the media. Such contacts are to be IMMEDIATELY forwarded to the Administrator. The request will then be forwarded to the Office of Legislative Affairs or Office of Communications, respectively. DAS counsel will also be advised of such contacts.

4. Level 4 Protest (Litigation commenced)

- a) Any staff who receive notice (verbal or written) that any legal action is being filed are to notify DAS counsel and the Administrator **IMMEDIATELY. THIS MEANS STOPPING WHATEVER ACTIVITIES YOU ARE DOING AND CONTACTING BOTH PARTIES WITHOUT DELAY.** If you are unable to reach either of the parties, contact your/any manager immediately. The manager will then contact the Office of Chief Counsel and/or the Attorney General representing DAS. The Administrator and Deputy Director are to notified immediately of any such legal action.
- b) Any person receiving a subpoena should notify DAS counsel and the Administrator immediately.
- c) Any person receiving a subpoena, on behalf of another named individual, should obtain proper identification from the process server, note the time and date of receipt, and forward to DAS counsel or the Administrator immediately.
- d) Buyer/analyst may be required to provide a memo, on the bid at issue, for the litigation file.

- e) At no time are any records to be released for review or copies made thereof, without expressed authority from the Attorney General or DAS counsel.
- f) Upon notification that legal action has ensued, all relevant communications with non-Procurement Services personnel, in either written or verbal form, must be approved by counsel.
- g) Generally, once litigation has been filed, staff may be deposed by counsel (state and vendor). Affected staff will be advised of any depositions by counsel, will be advised of dates and times for the deposition, and will receive instructions from the Attorney General representing the department on the deposition process.
- h) Once litigation has ensued, all discussion relative to the litigation, outside of the office, are to be discontinued unless directed otherwise by the Attorney General.
- i) At no time are any Procurement Services staff to respond, or attempt to respond, to inquiries from legislators and/or the media. Such contacts are to be IMMEDIATELY forwarded to the Attorney General. If directed by the Attorney General, the request will then be forwarded to the Office of Legislative Affairs or Office of Communications, respectively for response. The Chief Administrator, Administrator and DAS counsel will also be advised of such contacts.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Exceptions to Terms & Conditions
POLICY/PROCEDURE NO.: PUR-008
DATE ISSUED: November 21,2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Office of Procurement Services, State Purchasing is responsible for establishing contracts of supplies and services required by most state agencies. The preferred process for making such purchases is the Competitive Selection process as defined in Ohio Revised Code Section 125.01. This process involves issuance of Invitations to Bid (ITB) that describe the intended purchase, time and dates for delivery, pricing schedules and various other terms and conditions related to the procurement. These terms and conditions are broken down into three categories; Instructions to Bidders, Contract Terms and Conditions and Special Contract Terms and Conditions.

II. Scope

Terms and Conditions of an ITB or RFP are not considered to be specifications that describe the supplies or services to be purchased. Terms and Conditions do such things as; set forth guidelines on how vendors are to structure and submit their bid responses, establish warranty coverage and time periods, establish shipping and payment terms and address limits of liability on the part of the State and the vendor. In general, Terms and Conditions are designed to protect the interests of the State. This Policy and Procedure will describe the current Terms and Conditions in use by Procurement Services and set forth procedures staff are to follow whenever a vendor elects to replace these Terms and Conditions with their individual Terms and Conditions that may not be in the best interest of the State.

III. Policy

It is the Policy of DAS – Procurement Services that all vendors accept the Terms and Conditions, as written. Any request to alter these Terms and Conditions will be on a case-by-case basis and must be approved by the DAS-Office of Chief Counsel, Contracts Manager and/or the Administrator.

IV. Intent of Terms and Conditions

The purpose of Terms and Conditions is to establish a baseline under which DAS – Procurement Services will conduct business with a vendor. Procurement Services utilizes three basic categories of

Terms and Conditions; the Instructions to Bidders, the Standard Contract Terms and Conditions and Special Contract Terms and Conditions. Each category includes, but is not limited to the following:

Instructions to Bidders: description of a complete signed bid; when, where and how bids will be delivered; bids are public record; modifications to bids; evaluation of the lowest responsive and responsible bidder; rejection, withdrawal and correction of bids; bid preparation and submittal and filing protests; etc..

Contract Terms and Conditions: contract components; contract changes; contract orders, funding, delivery, invoicing and payment; contract performance and non-performance; contract termination and cancellation; insurance requirements; price adjustments; equal opportunity requirements; automation; etc.

Special Contract Terms and Conditions: bid conferences and site visits; supportive documentation and samples; price adjustments, evaluation and award of contracts; delivery and acceptance; prevailing wages; bonds and sureties; etc.

V. Revisions to Terms and Conditions

Periodically, DAS will review the existing instructions to bidders as well as the terms and conditions and, if necessary, revise the documents to reflect the current business arena. These documents shall not be altered without review of the DAS Office of Chief Counsel and approval of the State Purchasing Contracts Manager and/or Administrator of Procurement Services. Terms and Conditions are written so as to treat all bidders equally while protecting the interests of the State.

VI. Counter-offers

At times, bidders will attempt to offer their individual terms and conditions as part of their bid response, however, such counter-offers may not be acceptable to State Purchasing. As a courtesy to the bidder, the analyst will contact the bidder and afford them an opportunity to withdraw their counter-offer. Bidders who are not agreeable to withdraw their counter-offer and to accept the published instructions and/or terms and conditions will be deemed not responsive. All discussions regarding the counter-offer will be confirmed in writing. The analyst will utilize the approved letter pertaining to "Exceptions" to notify the bidder.

**State of Ohio
Ohio Department of Administrative Services
General Services Division**

POLICY/PROCEDURE NAME: Contract Modifications
POLICY/PROCEDURE NO.: GSD-PUR-09
DATE ISSUED: December 10, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Department of Administrative Services, Office of Procurement Services – State Purchasing is responsible to establish contracts for supplies and services required by state agencies. State Purchasing utilizes a variety of processes to establish contracts which includes; Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts and State Term Schedules. State agencies and other governmental entities purchase over \$400 million in supplies and services from these contracts.

II. Scope

These contracts contain terms, conditions, specifications and pricing that are favorable to the State. Once signed by the Director of DAS (or his designee), these contracts create a legally binding agreement between DAS, state agencies and the vendor. Any party to the contract that fails to perform in accordance with the contract will create a breach of contract that could subject the party to legal remedies up to and including litigation.

During the term of the contract, it may be necessary to make a change or modify the contract, but a contract cannot be arbitrarily modified without mutual agreement of the parties. Once agreement is reached, only State Purchasing may modify the contract. This Policy and Procedure will set forth guidelines and procedures for modifying a contract.

III. Policy

Any change or modification to a DAS contract established by Procurement Services – State Purchasing will be made in writing and will contain all necessary approvals. Verbal modifications or modifications made to a contract without the express written authority from State Purchasing may be considered to be invalid.

IV. Ability to Modify a Contract

The Contract consists of all documents associated with the method used to create the contract which may include, but not be limited to:

- ◆ The complete ITB, RFP or offer
- ◆ Instructions to Bidders (if applicable)
- ◆ Standard Contract Terms and Conditions
- ◆ Special Contract Terms and Conditions
- ◆ Specifications
- ◆ All supportive documentation and samples
- ◆ Addenda to the ITB or RFP (if applicable)
- ◆ Valid State of Ohio purchase orders or other encumbering documents

The Contract will describe the supplies or services to be purchased, how each party to the Contract will perform, payment terms, pricing, etc. The Contract may contain terms and conditions that permit the contract to be modified. For example: price adjustments, contract renewal and re-assignment of the contract. Some modifications may not require mutual agreement of the parties, but, in general, modifications do require mutual consent of the parties to the contract. The following are examples of typical terms and conditions that are contained in DAS contracts that permit modification:

- ◆ Unilateral 30-day renewal, mutual agreement not required
- ◆ Grammatical corrections, mutual agreement not required
- ◆ Unilateral early termination, mutual agreement not required
- ◆ Renewal beyond thirty days, mutual agreement required
- ◆ Price adjustment, mutual agreement required
- ◆ Change of Contractor address, mutual agreement required
- ◆ Assignment of Contract, mutual agreement required

Only Procurement Services - State Purchasing may modify a DAS Contract. All requests to modify a Contract must be forwarded in writing to State Purchasing for consideration. In order for a Contract to be modified, it must contain a provision allowing for modification. Any modification that significantly alters the original scope of the Contract is not permissible. In such a case, the Contract must be terminated with thirty days prior notice to the vendor. If the need for a contract remains, State Purchasing may then re-bid the intended purchase or grant the agency a Release and Permit to procure under its direct purchase authority.

V. The Amendment

A modification to the Contract is accomplished using an Amendment. All Amendments must be in writing. The Amendment serves as written notification to all parties to the Contract that a modification has been authorized. When mutual consent is required, signed written documents will be secured from all parties to the Contract indicating that

they agree to the change. This correspondence will be retained in the Contract file. Failure to obtain written agreement from all parties, where required, will invalidate the modification provided for by the Amendment.

The analyst will be responsible to obtain all written agreements and related documentation to support the modification. The analyst will then prepare the Amendment to include language indicating the purpose of the Amendment and that the modification is hereby made a provision of the Contract. The analyst will then forward the completed Amendment to their respective Manager for review and approval. Upon review, the Manager will determine whether or not the proposed Amendment should be forwarded to DAS Office of Chief Counsel for review and approval. The Manager will then forward the Amendment to the Contracts Manager or Administrator (in absence of Contracts Manager) for review. The Contracts Manager or Administrator will provide final approval for the Amendment. Once final approval has been obtained the Amendment will be attached to the respective Contract and placed on the Internet with all appropriate Contract documentation. Unless otherwise stated, no modification shall be applicable prior to the effective date listed on the Amendment.

VI. Creating the Amendment to the Contract

The analyst will be responsible for the creation of the Amendment to the Contract using the "Contract Amendment Worksheet." All supportive documentation will be attached to the worksheet. Amendments requiring approval of DAS Office of Chief Legal Counsel will include written documentation approving the modification to the Contract. No Amendments will be placed into the Contract until all required approvals have been obtained. The signed worksheet will be retained in the Contract file. The analyst may correct any grammatical errors discovered after posting of the Amendment to the electronic bulletin board.

CONTRACT AMENDMENT WORKSHEET

CONTRACT No.: _____ INDEX No.: _____ Date: _____

CONTRACT DESCRIPTION: _____

PURPOSE OF AMENDMENT

- Renewal _____ Unilateral 30 Day _____ Mutual _____ Months (Req. D/D approval)
- Grammatical Corrections
- Unilateral Termination with 30 days Notice (Req. Legal Approval)
- Cancellation _____ Partial _____ Total (Req. Legal Approval)
- Allowable Price Adjustment
- Contractor change of address
- Contract assignment
- Add-on to Contract New ITB No. _____
- Re-award
- Other _____

REVIEWS AND APPROVALS

Submitted to Manager	_____ (Date)	_____ (Initials)
Returned for Corrections	_____ (Date)	_____ (Initials)
Re-Submitted to Manager	_____ (Date)	_____ (Initials)
Approved by Manager	_____ (Date)	_____ (Initials)
Approved by Administrator	_____ (Date)	_____ (Initials)

ALL RENEWALS

Approved by Deputy Director	_____ (Date)	_____ (Initials)
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**State of Ohio
Ohio Department of Administrative Services
General Services Division**

POLICY/PROCEDURE NAME:	Bid Modifications
POLICY/PROCEDURE NO.:	GSD-PUR-10
DATE ISSUED:	December 10, 2001
DATE REVISED:	December 21, 2007
RESPONSIBLE UNIT:	Office of Procurement Services

I. Background

The Office of Procurement Services – State Purchasing is responsible to establish contracts for various types of supplies and services required by state agencies. State Purchasing utilizes a variety of methods to establish these contracts which includes; Competitive Sealed Bid, Competitive Sealed Proposal, Multiple Award Contract and State Term Schedule. The preferred contracting process is Competitive Selection which includes Competitive Sealed Bids and Proposals. Law requires that Bids and Proposals describe the intended purchase, list time and date for delivery of the response and include instructions, terms and conditions relative to the intended purchase. Notice of the bid or Proposal is posted on an electronic bulletin board, and, as a courtesy, electronically sent to vendors who have registered to receive such notice.

II. Scope

Law requires Procurement Services to give notice of the Invitation to Bid (ITB) or Request for Proposals (RFP) to interested parties (bidders), as well as, place notices on an electronic bulletin board. This notice must be posted for a specified number of days as determined by Procurement Services, sufficient to allow bidders ample time to prepare and submit their bid response by the date and time for official bid opening. During the period of advertisement, we may discover that certain information has not been included in the ITB or RFP that could impact how a bidder would respond. In such situations, Procurement Services will issue an Addendum to incorporate the modification into the ITB or RFP. This Policy and Procedure will provide guidance for modifying an ITB or RFP.

III. Policy

When it is necessary to modify an Invitation to Bid or Request for Proposal, such modification will be completed in writing and posted to the electronic bulletin board. It will be the responsibility of the bidder to periodically check the bulletin board to determine if any addenda have been issued.

IV. Modifications to the ITB or RFP

At any point during the time period DAS gives notice of the ITB or RFP, it may be necessary to make changes to the ITB or RFP. Changes may be the result of a formal bid conference, new information from the bidders, or new requirements from respective state agencies. Examples of modifications to the ITB include, but are not limited to:

- ◆ Modification of the scope of the project

- ◆ Modification of the specifications
- ◆ Modification of any terms and conditions
- ◆ Modification of bid opening date

V. The Addendum

Any changes or modifications to the ITB or RFP must be completed in writing. Procurement Services will use the Addendum to modify the ITB or RFP. The Addendum will reference the portions of the ITB or RFP amended and will be posted on the electronic bulletin board. The Addendum will be distributed within a reasonable time to allow prospective bidders to prepare their bid response. If determined that there is not sufficient time for prospective bidders to prepare their bid response, Procurement Services may extend the date for opening. If determined that recommended changes significantly alter the original ITB or RFP, Procurement Services may cancel the ITB or RFP and re-bid under revised specifications at a later date.

All addendums must be issued a minimum of five business days prior to the scheduled date of opening. If there is less than five business days available Procurement Services will either extend the date for opening or cancel the ITB or RFP.

VI. Creating the Addendum

The analyst will be responsible for preparing the Addendum using the "Bid Addendum Worksheet". All supportive documentation, including language indicating the purpose of the Addendum, will be attached to the worksheet. The analyst will assign an Addendum number and then forward the completed Addendum to his/her respective Manager for review and approval. Upon review, the Manager will determine whether or not the proposed Addendum should be forwarded to DAS Office of Chief Counsel or Contracts Manager (Administrator in absence of the Contracts Manager) for review and approval. After approval, the Manager will forward the Addendum to the Bid Desk for posting on the electronic bulletin board. The signed worksheet will be retained in the ITB or RFP file. No Addendum will be issued unless all required signatures have been obtained. The analyst may correct any grammatical errors discovered after posting of the Addendum to the electronic bulletin board.

BID ADDENDUM WORKSHEET

ANALYST NAME:

BID No.:

INDEX No.:

ADDENDUM NUMBER:

DATE:

DESCRIPTION: _____

PURPOSE OF ADDENDUM

- Extend Opening
- Cancellation (Req. Legal/Administrator Approval)
- Modification to Project Scope
- Modification to Specifications
- Modification to Terms and Conditions (Req. Legal/Administrator Approval)
- Grammatical Corrections
- Other (Other)

File name and location: _____

REVIEWS AND APPROVALS

	<u>Date</u>	<u>Initials</u>
Submitted to Manager	_____	_____
Returned for Corrections	_____	_____
Re-Submitted to Manager	_____	_____
Approved by Manager	_____	_____

Includes the review of worksheet, mock-up, camera-ready, vendor documents as applicable.

ADDITIONAL REVIEWS AND APPROVALS (IF NECESSARY)

Submitted to Legal Counsel	_____	_____
Approved by Legal	_____	_____
Submitted to Administrator	_____	_____
Approved by Administrator	_____	_____

Includes the review of worksheet, mock-up, camera-ready, vendor documents as applicable.

BID DESK REVIEWS

Posted by _____

Rev. 01/14/02

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY / PROCEDURE NAME: Delegated Signature Authority
POLICY / PROCEDURE NO.: PUR-011
DATE ISSUED: August, 2001
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Department of Administrative Services is responsible to let contracts for various types of supplies and services required by state agencies. The Office of Procurement Services, which is a part of DAS, establishes and maintains these contracts. Procurement Services utilizes different methods to establish these contracts which includes; Competitive Sealed Bid, Competitive Sealed Proposal, Multiple Award Contracts and State Term Schedules. Many of these contracts are also used by local governmental agencies, political subdivisions and institutions of higher education enrolled in the DAS Cooperative Purchasing Program. Each fiscal year combined purchases by state agencies and Coop members from DAS contracts are estimated at \$400 million.

II. Scope

This Policy and Procedure describes the authority granted to DAS to enter into contracts and the ability of the Director to delegate signature authority to certain named managers within the General Services Division and the Office of Procurement Services.

III. Authority to Contract / Delegated Signature Authority

Section 125.02 of the Ohio Revised Code authorizes DAS – Procurement Services to enter into contracts for supplies and services on behalf of most state agencies. Agencies exempted from DAS include:

- ◆ Adjutant General
- ◆ Capital Square Review and Advisory Board
- ◆ Department of Rehabilitation and Correction's program for employment of prisoners
- ◆ General Assembly
- ◆ Bureau of Worker's Compensation
- ◆ Institutions administered by Boards of Trustees

When establishing these contracts, Procurement Services may prescribe uniform rules governing form of specifications, advertisements of bids and proposals, opening of bids and proposals, making of awards and contracts and the purchase of supplies and performance of work. Law permits the Director of DAS to delegate authority to certain named managers within the General Services Division to affix the Director's name to these contracts. This delegation is prepared and administered by the DAS, Office of the Chief Counsel, and will describe the type and level of authority at which the Designee may sign on behalf of the Director. Delegated signature authority carries the same level of obligation as if the Director has signed the Contract. Thus, once the Contract is signed by the Designee, DAS is bound by the terms, conditions and specifications of the Contract.

Delegated signature authority for the Office of Procurement Services is vested in the State Purchasing Administrator and State Purchasing Contracts Manager who may sign contracts without limitation or restriction. In the event that either of these designees is absent, full authority to sign contracts has been delegated to the Division Deputy Director. Limited signature authority has also been delegated to Procurement Managers who have attained professional certification status. These multiple levels of signature authority have been established to prevent any lapse or delay in processing contract awards should one or more of the designees be absent from the Office.

III. Conditions for Delegated Signature Authority

Authority to sign contracts and legally obligate the DAS, and the state of Ohio, carries with it a tremendous responsibility. Individuals authorized to sign contracts must be knowledgeable of the state's procurement laws and have a strong working knowledge of general contract process and law. To be eligible for delegated signature authority the individuals must be in an active management status and shall have active designation as a Certified Professional Public Buyer (CPPB) or Certified Public Purchasing Officer (CPPO). This certification is administered by the Universal Public Purchasing Certification Council (UPPCC) and currently through the National Institute of Governmental Purchasing (NIGP). Unlimited signature authority requires the individual to have a CPPO designation. Those management positions having delegated signature authority within the General Services Division and Office of Procurement Services, to include their limits of authority, are as follows:

<u>POSITION</u>	<u>LEVEL OF AUTHORITY</u>	<u>DESIGNATION</u>
Division Deputy Director	Unlimited	CPPO
State Purchasing Administrator	Unlimited	CPPO
State Purchasing Contracts Manager	Unlimited	CPPO
State Purchasing Procurement Manager	<\$500,000	CPPO
State Purchasing Procurement Manager	<\$100,000	CPPB

UPPCC certification must be maintained throughout the time period covered by the delegated signature authority. No individual may delegate their authority to another individual without express prior written approval of the Director of DAS.

IV. Review and Approval Process for Contract Documents

Listed below is the signature flow chart that depicts the review, approval and final sign-off processes for all documents used by the Office of Procurement Services to establish contracts. When legal counsel is involved, staff shall obtain approval from their manager to meet with counsel prior to any discussions. Staff will then advise their manager of the outcome of such discussion.

Term Contracts & One Time Bids

Proposed ITB/RFP:	Analyst → Manager → Contracts Manager (Optional)
ITB/RFP Document:	Analyst → Legal (RFP's only) → Manager → Contracts Manager (Optional)
ITB/RFP Addenda:	Analyst → Manager → Contracts Manager (Optional)
ITB/RFP Cancellation:	Analyst → Legal → Manager → Contracts Manager → Administrator (Optional)
Reject All ITB's/RFP's:	Analyst → Legal → Manager → Contracts Manager → Administrator (Optional)
MBE to Open:	Analyst → Manager → Contracts Manager
Contract Award <\$ 100,000, No Disq's.:	Analyst → Manager (CPPB)
Contract Award <\$500,000, No Disq's.:	Analyst → Manager (CPPO)
Contract Award >\$500,000	Analyst → Manager → Contracts Manager *
Contract Award, Not Responsive:	Analyst → Legal (Optional) → Manager → Contracts Manager*
Contract Award, Not Responsible:	Analyst → Legal (Optional) → Manager → Contracts Manager*
Contract Amendment, Administrative:	Analyst → Manager
Contract Amendment, Other	Analyst → Manager → Contracts Manager *
Contract Termination/Cancellation:	Analyst → Legal → Manager → Contracts Manager → Administrator (Optional)
Contract Renewal <\$1,000,000:	Analyst → Legal (Optional) → Manager → Contracts Manager*
Contract Renewal >\$1,000,000	Analyst → Legal (Optional) → Manager → Contracts Manager → Administrator
Contract Waivers:	Agency → Manager → Contracts Manager* (Optional)

State Term Schedules

Proposed STS:	Analyst → Manager → Contracts Manager*
STS Contract Award <\$100,000:	Analyst → Legal (Optional) → Manager (CPPB)*
STS Contract Award < \$500,000	Analyst → Legal (Optional) → Manager (CPPO)*
STS Contract Award >\$500,000	Analyst → Legal (Optional) → Manager → Contracts Manager
STS Contract Renewal <\$1,000,000	Analyst → Manager → Legal (Optional) → Contracts Manager*
STS Contract Renewal >\$1,000,000	Analyst → Manager → Legal (Optional) → Contracts Manager → Administrator
STS Amendment, Administrative:	Analyst → Manager
STS Amendment, Other	Analyst → Manager → Contracts Manager Administrator (Optional)
STS Contract Cancellation:	Analyst → Manager → Legal → Contracts Manager → Administrator (Optional)

Community Rehabilitation Program Contracts

Work Center Certification	Analyst → Legal (Optional) → Manager → Administrator*
Work Center De-Certification	Analyst → Legal → Manager → Administrator
Contract Award <\$100,000	Analyst → Manager(CPPB)*
Contract Award <\$500,000	Analyst → Manager (CPPO)*
Contract Award >\$500,000	Analyst → Manager → Administrator*
Administrative Amendments	Analyst → Legal (Optional) → Manager*
Other Amendments	Analyst → Legal (Optional) → Manager → Administrator*
Contract Renewal <\$500,000	Analyst → Legal (Optional) → Manager*
Contract Renewal >\$500,000	Analyst → Legal (Optional) → Manager → Administrator
Contract Cancellation	Analyst → Legal → Manager → Administrator

Release and Permits

All	Analyst → Manager → Contracts Manager*
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Contract Compliance

Confirmation Receipt Letter	Specialist → Manager
Initial Cure Letter	Specialist → Legal (Optional) → Manager
Revised Cure Letter	Specialist → Legal → Manager → Contracts Manager (Optional)
Cancellation Warning Letter	Specialist → Legal → Manager → Contracts Manager*
Cancellation Letter	Specialist → Legal → Manager → Contracts Manager*
Debarment Notice	Manager → Contracts Manager → Legal → Administrator → Deputy Director

(* Administrator in absence of Manager / Deputy Director in absence of Contracts Manager and Administrator)

**State of Ohio
Ohio Department of Administrative Services
General Services Division**

POLICY/PROCEDURE NAME: Bid & Performance Bonds
POLICY/PROCEDURE NO.: PUR-12
DATE ISSUED: September 9, 2002
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of State Purchasing

I. Background

The Department of Administrative Services is responsible to let contracts for supplies and services required by state agencies. The Office of Procurement Services - State Purchasing oversees the processes and performs all activities associated with establishing the contracts. A variety of methods are available to establish contracts to include; Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts and State Term Schedules. DAS contracts are also available to local governments and other political subdivisions who have enrolled in the DAS Cooperative Purchasing Program. Purchases from DAS by state agencies and Coop members are estimated at \$400 million per fiscal year.

II. Scope

The preferred methods to establish contracts are the Competitive Sealed Bid (ITB) and Competitive Sealed Proposal (RFP). When using the ITB contracts are awarded to the lowest responsive and responsible bidder and for RFP's to the bidder with the most advantageous offer to the State. A major concern with any contract award is the ability of the bidder to perform the contract properly. State Purchasing will consider a number of factors when evaluating the capability of the bidder to include; the experience of the bidder, his financial condition, his conduct and performance on previous contracts, his facilities, his management skills, and his ability to execute the contract properly. If a vendor who has been awarded a contract does not perform properly, the State will be faced with significant time delays and increased costs. One way to ensure proper performance of the bidder is require a bid or performance bond as part of the bid submission or prior to award of the contract. Law permits State Purchasing to require such a bond when deemed necessary. This Policy and Procedure has been established to explain the bond process including procedures for requesting a bond, assessing vendor performance, placing a claim against the bond and return of the bond upon completion of the contract.

III. Policy

The Office of Procurement Services – State Purchasing may request a bidder to submit a bid and/or performance bond on any intended purchase. Care will be taken to establish monetary values of the bond so as not to discourage or eliminate competition, but with sufficient monetary value as to protect the interests of the State.

IV. Intent of a Bond

The intent of a bid or performance bond is to ensure that the bidder, if awarded a contract, will faithfully execute the contract. If the vendor fails to perform the contract properly, the State may file a claim against the bond and require the bonding company to locate another vendor to complete the contract. It must be understood, however, that filing a claim against a bond may not produce the required results and may actually result in further delays in completing the contract. Historically, purchasers have looked upon a bid or performance bond as serving two purposes; 1) to pre-qualify vendors and 2) to serve as an “insurance policy” that could be redeemed for a fixed monetary amount in the event that a vendor failed to perform any part of the contract. Bond funds could then be used to hire another vendor, at the discretion of the purchaser, to complete the contract. A bid or performance bond does serve to somewhat pre-qualify vendors as the vendor must be in good standing and must maintain a positive financial status to qualify for a bond. A bid or performance bond is not, however, an insurance policy that may be redeemed for monetary damages.

A key distinction between a bond and an insurance policy is that an insurance policy responds to a loss while a bond guarantees performance. When filing a claim against an insurance policy, the damages are evident and the policy will pay a monetary sum that may be used by the claimant to offset the damages. For bonds, the purchaser must be able to prove that the vendor cannot and/or will not perform the contract (e.g. the vendor declares bankruptcy, the vendor closes its business operations or the vendor’s establishment is destroyed by a natural disaster). These situations could be considered as pure default by the vendor and may support filing a claim against the bond. Other failures to perform by a vendor (e.g. backing out of a bid response, non-delivery, substituting items, providing sub-standard quality, etc.) may not be considered as a pure default by the surety and thus would not support a claim filed against the bond. Further, if a claim is filed and accepted by the surety, funds will not be paid to the claimant. The surety is responsible to locate another provider to complete the contract. Consideration must be given by the purchaser as to whether or not a bond will best protect the interests of the State should a contractor fail to perform the contract.

V. Form of the Bond

Ohio Revised Code Section 125.10 provides that DAS may require all bids or proposals be accompanied by a bond. The two basic types of surety instruments that DAS may request are described below.

1. The **Bid Bond** is requested from the bidder as part of their bid response. The intent is to insure that the bidder is submitting the bid in good faith, will not withdraw their bid from consideration and is capable of performing the contract. Upon award of a contract, the performance bond replaces the bid bond. A bid bond is not a performance bond and is not a substitute for a performance bond. Bid bonds are generally less costly to the vendor.
2. The **Performance Bond** is requested to insure that the vendor will properly perform the contract. A performance bond may be requested as part of the bid submission or may be requested during the evaluation process. Once a contract is awarded, the bond will remain in effect for the duration of the contract unless the State decides to release the bond prior to completion of the project. A bid guaranty and contract bond is also an acceptable form of performance bond. The amount of the performance bond is generally based upon a percentage of the total value of the project and may range from 2% to 100% of the total project value.

All bonds shall affirmatively state on their face that the surety is authorized to execute bonds in the state of Ohio and that the liability incurred is within the limits of Section 3929.02 of the Ohio Revised Code. Failure to include this statement shall not cause the bid to be deemed not responsive if, in fact, the surety is authorized to execute bonds in the state and the liability is within the limits of Section 3929.02 of the Revised Code. All bonds and surety instruments will be made payable to the Treasurer, State of Ohio.

VI. Requesting the Bond

The agency may request a provision for a bond be included in the bid or RFP to protect the agency from loss caused by non-performance of the vendor. If requested, the contract analyst will consider factors such as, but not limited to:

- The type and value of the proposed project
- The risk to the State should a vendor not properly perform the contract
- The dollar amount of the bond necessary to offset the risk
- Would another form of legal remedy better protect the State
- Will inclusion of a bond serve to limit or eliminate competition
- The cost of the bond to the State

Once research is completed the contract analyst will make a recommendation to the manager as to whether or not a bond should be requested and in what dollar amount. If the Manager agrees written confirmation of the bond request is to be obtained from the customer agency. The contract analyst will insert the appropriate bond language into the bid documents. A bid bond will be a mandatory submission with the bid/RFP response to insure that the bidder is submitting the bid/RFP in good faith and that the bidder, if awarded the contract, is capable of properly performing the contract. The dollar value of the bid bond will be commensurate with the performance bond.

If a performance bond is requested, the contract analyst may require the bond as part of the bid/RFP response or may request the bond during the evaluation phase. During evaluation, once the potential lowest responsive and responsible bidder or bidder with the most advantageous offer has been determined, a decision will be made as to whether or not the performance bond will be required. If required, the bidder will have ten (10) working days to submit the performance bond. The contract analyst will confirm the request in writing using the standard bond request letter (Exhibit 'A'). If not submitted within this time period, the bidder may be considered to be not responsive and their bid disqualified from further consideration.

If the bidder is unable to secure the bond within the ten (10) days, due to the approval process of the surety (bonding company), the bidder may be permitted to submit a letter of intent from their surety indicating the reasons for the delay and of the surety's intent to issue the bond at a later date. If State Purchasing accepts the letter of intent, the contract analyst will proceed with the evaluation and award of the contract. If the bidder then fails to provide the performance bond within the time stated on the letter of intent, the bidder will be in default and State Purchasing will take appropriate action to remedy the default. Submission of a letter of intent requires the prior written approvals of the DAS Office of Chief Counsel and the Contracts Manager or Administrator (in absence of the Manager).

VII. Receipt of the Performance Bond

Upon receipt of the performance bond, the contract analyst will examine the documents in their entirety. The performance bond will be rejected if it contains material defects that are not in conformance with the bid documents and/or the bond does not contain all relevant signed support documents. The vendor will be deemed not responsive and their bid disqualified. Non-material defects may be corrected at the discretion of the Contracts Manager or Administrator. If accepted, the performance bond will be attached to the bid/RFP response and retained in the bid file. The contract analyst will then proceed with awarding of the contract.

VIII. Renewal of the Bond

The contract analyst will be responsible to ensure that the performance bond is active for the duration of the contract. If the contract is renewed, the contract analyst will contact the agency and determine if an additional performance bond is necessary to cover the renewal period. If necessary, the contract analyst will contact the vendor and request the performance bond. The vendor will have ten (10) working days to furnish the performance bond. Failure to provide the performance bond will be considered a default. The analyst will confirm the performance bond request in writing using the standard letter, (Exhibit 'B'). If a performance bond is not necessary for the renewal period, the contract analyst will request a written waiver from the agency. The contract analyst will proceed to issue the renewal amendment following standard procedures. The original performance bond will not be released until the contract has been completed.

IX. Filing a Claim

Any claim to be filed with the surety (bonding company) requires agreement of the agency and approval of DAS General Counsel and the Contracts Manager or Administrator. The State must provide conclusive evidence to the surety that the vendor cannot and/or will not complete the contract. Issues such as repeated late delivery, delivery of non-conforming items, incomplete delivery, etc. may be deemed as “customer service” issues and may not qualify as a claim against the bond. State Purchasing has a responsibility to place the surety on notice when the vendor is not performing. For the purposes of this policy and procedure, such notice will consist of the Complaint to Vendor filed by the agency. The contract analyst will prepare a cover letter (Exhibit ‘C’), attach the respective CTV(s) and forward to the surety. A copy of this notice will also be sent to the vendor. The surety may or may not acknowledge the notice.

If the vendor fails to resolve the issue and perform the contract, Procurement Services may file an official claim with the surety. The claim is to be accompanied by the complete file of the non-performance issue(s). If the surety accepts the claim, the surety will be responsible to locate another contractor to complete the contract. Determination of a replacement contractor may be at the sole discretion of the surety.

Note: It may be necessary that DAS file litigation to enforce the claim.

X. Completion of the Contract

Upon completion of the contract, the contract analyst will contact the agency to confirm proper performance by the vendor, in writing. If properly completed, the contract analyst will prepare a release letter and forward to the vendor. The original performance bond will be retained in the bid file. State Purchasing and the agency may determine that the contractor is properly performing the contract and may elect to release the bond prior to completion of the contract. A request for early release must be confirmed in writing and must be approved by DAS Office of Chief Counsel and the Contracts Manager or Administrator.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Internal Counsel
POLICY/PROCEDURE NO.: PUR- 013
DATE ISSUED: February 16, 2007
DATE REVISED:
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

Ohio law places a responsibility upon the Department of Administrative Services to make purchases of supplies and services required by state agencies. The Director of DAS has delegated authority to the Office of Procurement Services to make such purchases on behalf of state agencies. The Office does not actually issue a purchase order for the required supply or service, but rather establishes contracts with vendors for the required products and services. A variety of methods are utilized to establish these contracts to include; Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts and State Term Schedules. Many of these contracts are also made available to local governments and other political subdivisions under the DAS Cooperative Purchasing Program. Each fiscal year purchases by state agencies and Coop members exceed \$400 million. Procurement Services is also responsible to establish contracts between a state agency or other governmental entity and sheltered workshops under the State Use Program. Purchases under the State Use Program exceed \$37 million each fiscal year.

II. Scope

All contracts will contain terms, conditions, specifications and pricing information relative to the supplies or services listed in the contract. It is imperative that the written contract accurately depict the needs of the State to ensure that all parties interested are provided with a fair and equal opportunity to offer their items to the State. Accuracy in these contracts also helps to ensure that the needs of the agencies are correctly met and tax dollars are spent correctly. DAS contracts are legally binding documents between the vendor and the department. If terms, conditions and specifications are not accurate or are found to be restrictive, the department is subject to formal legal action being filed in a Court of Law. If the Courts find that DAS has not met the requirements of law in developing their contracts, the Courts could rule that the contract is invalid which would subject DAS to further litigation from the vendor. This Policy and Procedure has been developed to assist the staff of Procurement Services with legal processes that must be followed in all bids, RFP's, contracts and related documents.

III. Policy

It is the policy of the Office of Procurement Services to seek legal advice from DAS Office of Chief Counsel in the development of bid, RFP and contract documents. When necessary, Procurement Services will seek legal advice from the Office of Chief Counsel in the evaluation and award processes, responding to formal protests and contract compliance issues.

IV. DAS Office of Chief Counsel

The Office of Chief Counsel will provide legal advice to Procurement Services. The Office of Chief Counsel will not represent Procurement Services in any active litigation, as this is the responsibility of the Ohio Attorney General. The Office of Chief Counsel will, however, work directly with Procurement Services and provide assistance to the Attorney General in all matters of litigation, whether pending or active. In addition, The Office of Chief Counsel will provide legal advice to Procurement Services on such topics as, but not limited to:

- ◆ Changes to Ohio Revised Code & Ohio Administrative Code
- ◆ Department Directives
- ◆ Requests for public records
- ◆ Minority Business Enterprise certification issues
- ◆ Review of vendor offerings for State Term Schedules
- ◆ Review of ITB/RFP/Contract documents, when applicable
- ◆ Ohio ethics laws
- ◆ Controlling Board requests
- ◆ Personal service contracts
- ◆ Contract compliance

V. Procedures

- A. Guidance and Interpretation. The Office of Chief Counsel will review and provide legal advice on all legal matters relative to contracting processes.
- B. Contracting Processes. Provide legal advice on any ITB, RFP, contract for supplies or services or contract with sheltered workshop. The contract analyst or other person responsible for the contract must first discuss the issue with their respective unit manager. In absence of the unit manager, the issue is to be discussed with the contracts manager or administrator. Staff should not to go directly to Counsel unless approved by the unit manager, contracts manager or administrator. Staff will report results of their discussion with Counsel to the unit manager, contracts manager or administrator, as applicable.
- C. Contract Compliance. Any issue of non-performance by either a state agency or a vendor is a breach of contract that could result in litigation. A breach of contract by a vendor could result in early termination of the contract, application of additional costs incurred by the state for replacement items to the vendor, denial of future awards to the vendor up to and including debarment of the vendor from participating in doing business with the state. Issues of breach of contract by the State could result in litigation being filed against the State and application of monetary penalties against DAS and/or the agency. The unit manager will be responsible to ensure that Counsel is involved with the contract compliance issues to ensure that all legal remedies are followed.
- D. Public Records Requests. A *public record* is any record, except for those records exempted under Section 148.43 of the Revised Code that are created and maintained by any public office. Any interested party may request to review public records and/or may request copies of public records. The agency is required to produce only those records that are created and maintained by the agency. It is preferred that public records requests be placed in writing to ensure that all

documents have been provided to the requestor. With the exception of standard requests to review bid/contract files by interested bidders, Counsel is to be advised of any public records request. Once the requested files have been compiled, they are to be forwarded to Counsel for review prior to releasing to the requestor. Public records requests received from any outside legal counsel, media or legislator or any request that intimates litigation are to be forwarded to Counsel immediately. Counsel will then advise course of action to fulfill the request. Public records requests are to be completed in a timely manner.

- E. Protests & Litigation. Any interested party may file a protest with the Office of Procurement Services. Protests are to be addressed in accordance with most recent version of Policy No. PUR-007. Any protests that threaten litigation are to be forwarded to Counsel and the Administrator immediately.

State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Professional Development
POLICY/PROCEDURE NO.: PUR – 14
DATE ISSUED: February 19, 2003
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of State Purchasing

I. Background

The Office of Procurement Services is responsible to let contracts for all types of supplies and services for the use by state agencies. These contracts may be developed through Competitive Sealed Bids, Competitive Sealed Proposals, Multiple Award Contracts or State Term Schedules or negotiated with sheltered workshops. Many of these contracts are used by local governments and political subdivisions under the DAS Cooperative Purchasing Program. Each fiscal year, combined purchases of state agencies and Coop members from these contracts are estimated to exceed \$400 million.

The contracting processes are very complex and require significant effort on the part of all staff. Two elements of this effort, continuing education and training, are key factors to maintaining this functionality. Managers, contract analysts and support staff invest significant time and effort to prepare specifications, evaluate bid responses and make recommendations for contract awards.

II. Scope

To promote professional development of those involved with the contracting process, management supports and, for certain positions, requires the employee obtain and maintain professional certification. Certification is offered by the Universal Public Purchasing Certification Council (UPPCC) and administered through the National Institute of Governmental Purchasing (NIGP). Two levels are offered; Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO). Certification involves extensive education and training in all facets of the purchasing process and is effective for a period of five (5) years at which time the employee must apply for re-certification. The UPPCC has established criteria upon which the certified professional may earn points toward re-certification. These criteria include, but are not limited to; involvement in NIGP, National Association of State Procurement Officials (NASPO), local procurement organizations (i.e., Central Ohio Organization of Public Purchasers (CO-OPP), attendance at conferences and organization meetings, attending NIGP sanctioned training courses and receiving professional recognition or awards. The individual must have accrued a minimum number of points within a five year period to qualify for re-certification. This Policy and Procedure has been established to assist employees in applying for and completing training courses, participating in organization meetings and attending seminars or conferences necessary to complete and maintain their professional certification.

III. Policy for Mandatory Certification

Professional certification is a required condition of employment for certain contract analyst and management level positions. The employee must take and pass the certification test within three years of placement into the position. It is the responsibility of the employee to be aware of training courses, conferences, organization meetings or other criteria, recognized by the UPPCC, to obtain and maintain their professional certification. Neither the Department nor any representative of management will be held accountable or responsible for any employee who fails to obtain and/or maintain their professional certification as mandated by the position.

IV. Policy for Elective Certification/Training

Professional certification and training is also available to employees who are not required to obtain and maintain UPPCC certification as a condition of employment. Employees who are interested in furthering their education by attending seminars and/or by participating in procurement related organizations should forward such interest to their respective manager. The activity must be job-related and requires prior approval of the Administrator.

V. Funding

Professional certification and training, whether mandatory or elective, is the responsibility of the employee. The employee may seek funding assistance from state sponsored sources (i.e., Workforce Development Funds or Professional Development Program) or from grants offered through the CO-OPP organization or other funding sources. Participation in the training requires approval of the employee's manager and is subject to workload conditions. When state funds are available, the Office may approve funding to pay for certification and training in the following manner (employee must meet minimum qualifications for eligibility):

A) Certification for CPPB

- ◆ Fees for testing (initial and one re-test)
- ◆ Fees for NIGP sanctioned seminars (maximum 96 hours)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

B) Certification for CPPO

- ◆ Fees for testing (initial and one re-test)
- ◆ Fees for NIGP sanctioned seminars (maximum 144 hours)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

C) Re-certification for CPPB/CPPO

- ◆ Must have minimum required re-certification points accrued
- ◆ Fees for re-certification
- ◆ Fees for NIGP sanctioned education/training seminars (maximum one seminar per year)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

D) Elective certification and/or training

- ◆ Fees for certification / re-certification (if applicable)
- ◆ Fees for education/training seminars (maximum 96 hours)
- ◆ Excludes travel/lodging expenses (reimbursement contingent upon funding; travel policies)

When funding is provided by the Office, the employee is responsible to attend courses/seminars and to pass any associated tests. Failure to do so may result in the employee being required to reimburse the Office for any fees paid by the Office.

VI. Conferences

An employee may request approval to attend a regional or annual conference sponsored by NASPO, NIGP or CO-OPP or other recognized procurement organization. Depending upon the availability of funds, the office will attempt to provide financial support to an employee interested in attending these conferences. An employee, who is interested in attending a NASPO and/or NIGP conference, when being funded by the office, must be in an active certification status (CPPB/CPPO). An employee interested in attending the NASPO or NIGP annual conference must advise their manager of such interest no later than September 30 of the current calendar for attendance during the forthcoming year's event (i.e., submit request to attend conference in 2007 by 9/30/06). The manager will complete a Qualification Summary for the employee that will be considered in determining which employees will be approved to attend the forthcoming conference. The employee should use the Qualification Summary rating when planning their professional purchasing activities. Other factors will also be considered, such as, but not limited to prior attendance at the conference(s) and expiration date of their certification. Employees who do not request consideration will be ineligible to attend at office expense. For the NASPO Annual Conference, a management representative will attend as this conference is designed for management level staff. Non-management employee may be approved to attend contingent upon funding and travel policies.

For all other conferences the employee may request approval to attend, however, the conference must be specific to their job duties.

The number of employees approved to attend any conference, either at office expense or at the expense of the employee, will be contingent upon approval of the Deputy Director. Approval to attend any conference will be granted on a case-by-case basis considering factors such as, but not limited to; workload, daily performance, previous attendance, etc. An employee requesting to attend a conference at their personal expense may be granted approved leave to attend the conference. Attendance at a conference, when paid by the office, is contingent upon availability of funds and is subject to any travel policies imposed by the Governor or the Office of Budget & Management.

VII. Transportation

An employee may request use of a state vehicle to attend training seminars or conferences or may use their personal vehicle. If the seminar or conference is within a 45 mile radius of Columbus, or the employee's residence, and the employee elects to use their personal vehicle, mileage will not be paid. If outside the 45 mile radius, a state vehicle should be used. If one is not available, the employee may be approved to use their personal vehicle and may be paid mileage in accordance with the State Travel Policy and Labor Agreement. Use of a state vehicle for out-of-state travel requires prior approval of the Administrator and Fleet Management. When using a personal vehicle, the employee must have the vehicle properly insured as required by Revised Code Section 4509.51. Approval to use other forms of transportation (i.e. air, bus, train) are contingent upon funds availability and travel restrictions.

VIII. Professional Organizations

In an effort to further employee professional development, employees are encouraged to participate in professional organizations. Such participation is strictly voluntary. The employee may request membership in the organization through their manager. The level of participation (i.e. officer, committee volunteer, etc.) requires prior approval from the employee's manager and will be contingent upon, but not limited to such areas as their existing workload and daily performance. The employee will be granted reasonable time to attend meetings and participate in related activities at the discretion of the manager. The membership fees may be eligible for payment by the Office contingent upon availability of funds. If Office funding is approved, the employee will be expected to attend meetings and participate in organization activities.

Professional organizations currently recognized by Procurement Services include:

- State Purchasing User Group (SPUG)
- Central Ohio Organization of Public Purchasers (CO-OPP)
- Ohio, Indiana, Northern Kentucky Chapter of NIGP (OINK)
- Southwestern Ohio Organization of Purchasers for Government (SWOP4G)
- National Association of State Procurement Officials (NASPO)
- National Institute of Governmental Purchasing (NIGP)
- Institute for Supply Management (ISM – previously NAPM)
- National Purchasing Institute (NPI)

QUALIFICATION SUMMARY – FY _____

Name: _____

Manager: _____

1. Certification Status:

CPPB, Expiration _____

CPPO, Expiration _____

In Process, Projected Completion Date _____

2. Work Effort

Contribution to Goals/Metrics	0	1	2	3	4	5
Projects Completed on Schedule	0	1	2	3	4	5
Quality of Work Product	0	1	2	3	4	5
Voluntary Agency/Vendor Visits	0	1	2	3	4	5
Attendance/Tardiness	0	1	2	3	4	5

3. Professional Development (officer/committee member, requires Manager approval)

Voluntary participation in NIGP/NASPO	0	1	2	3	4	5
Voluntary participation in CO-OPP/Other	0	1	2	3	4	5
Voluntary participation in SPUG	0	1	2	3	4	5

4. Certification / Re-Certification Efforts

Voluntary attendance at CO-OPP	0	1	2	3	4	5
Presentation at CO-OPP/NIGP/NASPO	0	1	2	3	4	5
Specification published by NIGP	0	1	2	3	4	5
CO-OPP award recognition	0	1	2	3	4	5
NIGP sanctioned seminars (based upon budget)	0	1	2	3	4	5
Other (refer to NIGP Activity Point Schedule)	0	1	2	3	4	5

Total Score: _____

0 = None	1 = Minimal	2 = Below Average	3 = Average	4 = Above Average	5 = Exemplary
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State of Ohio
Ohio Department of Administrative Services
General Services Division

POLICY/PROCEDURE NAME: Debarment
POLICY/PROCEDURE NO.: PUR-015
DATE ISSUED: December 01, 2005
DATE REVISED: February 16, 2007
RESPONSIBLE UNIT: Office of Procurement Services

I. Background

The Department of Administrative Services is empowered by law to make purchases of supplies and services required by state agencies. The Office of Procurement Services has been delegated authority by the Director of DAS to develop and establish contracts for these supplies and services. A variety of methodologies are used to establish these contracts including competitive sealed bids, competitive sealed proposals, multiple award contracts, state term schedules and contracts negotiated with sheltered workshops. Many of these contracts are also made available to local governments and other political subdivision enrolled in the DAS Cooperative Purchasing Program.

II. Scope

The processes used by Procurement Services to establish contracts are set forth in law and are designed to promote open competition and fairness to all vendors interested in selling their products or services to the state of Ohio. These processes are also structured to protect the interests of the State. Whenever a vendor does not follow the structured processes or does not properly perform a contract, the interests of the State could be placed into jeopardy. This Policy and Procedure was developed to address issues of non-conformance by a vendor in the procurement processes used by the State to procure supplies and services.

III. Policy

The Office of Procurement Services will continuously monitor activities of vendors attempting to do or who are currently doing business with the State to ensure conformance to the procurement processes and that vendors properly perform contracts. If a vendor fails to comply, the vendor will be subjected to the remedies as set forth in this Policy and Procedure.

IV. Submitting Bids and Awarding of Contracts

When Procurement Services gives notice to the supplier community of its desire to establish a contract for supplies or services there is an expectation that interested businesses will submit bids, proposals and offers in accordance with established procedures and that they will honor their bids, proposals and offers upon award of a contract. A contract is awarded by Procurement Services with the expectation that both the vendor and the state have entered into the agreement in good faith and that both parties will perform their respective duties and obligations in accordance with the contract terms, conditions and specifications at the prices quoted. When a vendor fails to comply with these expectations, Procurement Services will take necessary action, pursuant to law, to resolve the problem and to protect the interests of the state. These remedies may include, but are not limited to:

1. Denial of contract awards;
2. Cancellation of existing contracts;
3. Seeking replacement items from alternative sources; and
4. Seeking reimbursement of any additional costs for such replacement items from the contractor.

When problems become so severe as to jeopardize the interests of the state, the Director of Administrative Services (“the Director”) or his designee may debar a contractor from participating in the business of the state. When implementing debarment efforts, the Director will follow the procedures set forth below.

V. Causes for Debarment (ORC Section 125.25)

The Director of Administrative Services may debar a vendor from consideration for contract awards upon a finding based upon a reasonable belief that the vendor has done any of the following:

1. Abused the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids; or
2. Failed to substantially perform a contract according to its terms, conditions, and specifications within specified time limits; or
3. Failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract; or
4. Attempted to influence a public employee to breach ethical conduct standards or to influence a contract award; or

5. Colluded to restrain competition by any means; or
6. Been convicted of a criminal offense related to the application for or performance of any public or private contract, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the vendor's business integrity; or
7. Been convicted under state or federal antitrust laws; or
8. Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract; or
9. Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director; or
10. Through the default of a contract or through other means had a determination of unresolved finding for recovery by the Auditor of State under Section 9.24 of the Revised Code; or
11. Acted in such a manner as to be debarred from participating in a contract with any governmental agency.

VI. Procedures for Debarment

A. Investigation and referral. State agencies and Cooperative Purchasing members may notify the Office of Procurement Services, in writing, of vendor performance issues by any of the following means:

1. E-mail via the internet or similar means
2. Vendor performance survey
3. Complaint to Vendor
4. Letter
5. Other

After the documentation has been reviewed and verified, and if the Administrator reasonably believes that grounds for debarment exist, the Administrator will prepare a written report to the Director setting forth such findings, including recommendation for debarment of the vendor.

B. Notice of debarment. When the Director reasonably believes that grounds for debarment exist, the Director will send the vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor, a notice of the proposed debarment. The notice must include at least the following:

1. Reasons for the proposed action;
2. The law or rule directly involved;
3. Statement that the vendor may request a hearing within thirty (30) days of the time of mailing the notice;
4. A statement that the vendor may be represented by his attorney or by such other representative as is permitted to practice before the agency;
5. A statement that the vendor may present his position, arguments, or contentions in writing;
6. A statement that the vendor may present evidence at the hearing and examine witnesses appearing before and against him;
7. Any other information the Director deems relative to the proposed debarment.

The notice will be given by registered mail, return receipt requested. A copy of the notice will be mailed to attorneys or other representatives of record representing the vendor. Whenever a notice sent by registered mail is returned due to failure of delivery, the Director will make personal delivery of the notice by an employee or cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known residence or business of the vendor is located. When notice is given by a publication, a copy of the newspaper, with the first publication of notice marked, will be mailed to the last known address and the notice will be deemed received as of the date of the last publication.

C. Request for hearing, notice of hearing, right to appeal. Whenever the vendor requests a hearing, the Director will immediately set the date, time and place for the hearing and immediately notify the vendor. The date set for the hearing will be within fifteen (15) days, but not earlier than seven (7) days after the vendor has requested a hearing, unless otherwise agreed between the Director and the vendor. If requested by the vendor in writing, the Director may designate the place of the hearing to be in the county seat of the county in which the vendor resides or maintains its principal place of business in Ohio or at a place within fifty miles of the vendor's residence or principal place of business. If the vendor is not a resident of and has no place of business in the state of Ohio, the Director will hold the hearing in Franklin county, Ohio. The failure of the Director to give notice for any hearing as required by Sections 119.01 to 119.13 of the Revised Code will invalidate any order entered pursuant to the hearing.

A vendor adversely affected by the order of the Director may be appealed in accordance with Chapter 119 of the Revised Code.

VII. Period of Debarment

The Director will determine the length of the debarment period commensurate with the seriousness of the cause for such debarment up to, and including, permanent debarment. The Director, at his discretion, may rescind the debarment at any time if it is deemed to be in the best interest of the state of Ohio. After ninety days of the initial effective date of

the debarment, a vendor can apply for reinstatement, in writing, to the Director, citing actions taken to remedy the reason for debarment or steps taken to prevent a recurrence of the situation that caused the debarment. The Director may extend the period of the debarment if the Director that the extension is necessary to protect the interests of the state of Ohio.

VIII. Effect of Debarment

During the period covered by the debarment any vendor, and any specifically named affiliate, officer, employee, or other individual or entity associated with the vendor who has been debarred by the Director shall be ineligible to do any of the following:

1. Be included on any vendor lists;
2. Receive and submit bids or proposals issued by the state for the procurement of supplies and services;
3. Be awarded a contract for supplies or services; and
4. Participate in any business activities with any state department, board, commission, or institution.

IX. Posting of Debarment Decision

The Director will post notice of any debarment decision on the website maintained by the Office of Procurement Services.