

State of Ohio
Adjutant General's Department
Directorate of Installation Management and Resources
Office of State Contracting

Engineering Scenario Analysis for Wastewater Removal
77101600

SRC0000029790

The Directorate of Installation Management and Resources (DIMR) office for the Adjutant General's Department is seeking an engineering and cost evaluation for abandonment of a package plant at its McConnelsville installation and alternatives for the site's wastewater removal for treatment. Please submit a *proposal* to offer these professional services. These services will provide our Environmental Office with information for planning a future project.

Site Visit

A hosted site visit has been scheduled for May 5th at 10am. Offerors are encouraged to attend the site visit prior to submitting their proposals to make observations of any features that may impact the implementation of the proposed work plan or project objectives and to ask questions. Failure to attend the site visit will be insufficient reason to support any request to be released from a contract or to request financial adjustments.

Background and Description of Work

Location of work

Ohio National Guard's (OHARNG) readiness center serving the 174th Air Defense Artillery Brigade is located at 4497 Hawk Dr. in northeast McConnelsville.

Package plant history

Prior to 1990, engineered septic systems managed wastewater flows for small training areas on-site. New construction and increased presence altered sources and volume of wastewater generation. OHARNG, therefore, contracted installation of a decentralized wastewater treatment package plant sited at the north end of the property on State Route 78 (approximately at 39.672°, -81.838°) and discharging into an unnamed tributary to Bell Creek.

OHARNG entered into an agreement with the Village of McConnelsville to operate the plant. Qualified village personnel are responsible for routine maintenance, testing and other functions for compliance with the authority to operate; costs to the village are reimbursed by OHARNG.

Plant design and operational status

Plant design flow is 17,000 gpd and based on design projections of 412 persons on site and 2,400 gpd discharge from a vehicle wash station. A reduction in patronage and operations has resulted in persistent low flow conditions with averages reported at 500 and 900 gpd for years 2021 and 2022, respectively.

The plant has surpassed its 20-year design span, and the facility's authority to operate under its NPDES permit with Ohio Environmental Protection Agency (Ohio EPA) expires in April 2027. Given operational challenges and Ohio EPA's current position, OHARNG is not considering continued operation and permitting beyond this date.

Evaluation Objectives

Prior to committing significant resources in development and construction, DIMR requires an engineering scenario evaluation for abandoning the package plant and alternatives for wastewater removal. While a traditional gravity-fed solution is anticipated, a review of a Prelos system is desired if conditions merit this option as feasible. Other recommendations are, of course, welcomed.

The purpose of this assessment is to support informed decision-making for a course of action where recommendation(s) may be evaluated and supporting information may serve as a basis and guide for budgeting and solicitation for A/E services.

Points of Contact

Russ Tinnell, compliance manager of DIMR Energy and Environmental Department, will serve as project manager.

Performance Measures

An assessment should provide recommended alternatives for courses of action (COA) to ensure compliance and long-term viability for wastewater removal/treatment. For each COA, we require:

- Comparisons of alternatives (pros and cons) and estimated timelines;
- Cost estimates (with ranges where relevant to capturing uncertainties) for on lot equipment and right-of-way components and projections for O&M costs;
- Engineering assumptions used for estimates, such as soil conditions, bedding materials and topography; and,
- Drawings indicating the location and scale of components.

Evaluation of Proposals

Proposals will be reviewed by a team of subject matter experts in a blind manner (Offeror's company details will not be disclosed), so that the award will be objective. ADJ is looking for the best value. A detailed and thorough work plan is essential for the evaluation.

Disclaimer

Any and all documents developed by the Responder during the course of this inquiry will be provided to ADJ upon request and will become the property of ADJ, and the Responder shall not assert any claims arising under copyright or otherwise inconsistent with the transfer of ownership of such documents.

ADJ will not be liable for any costs incurred by a Respondent to this request, regardless of whether ADJ awards any Contract through this process, decides not to go forward with the Project, cancels this inquiry for any reason, or contracts for the Project at some future date.

Rejection of Proposals

The ADJ may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, or that the ADJ believes is excessive in price or otherwise not in its interests to consider or to accept. In addition, the ADJ may cancel this RFP, reject all the Proposals, and seek to do the Project through a new RFP or by other means.

ADJ may reject any Proposal if the Offeror takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the Offeror's Proposal fails to meet any requirement of this RFP. Any question asked during the inquiry period will not be viewed as an exception to the Terms and Conditions.

Offerors are advised there will be no opportunity to correct mistakes or deficiencies in their submitted materials after the Proposal Due Date. Proposals that are incomplete or otherwise missing the required information may not be evaluated.

Any modification that is broader in scope than ADJ has authorized may be rejected and treated as a withdrawal of the Offeror's Proposal.

The State has the right to reject a Proposal in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.

The Standard Terms and Conditions of the State of Ohio are tied to legislation and are therefore not negotiable. Offerors who take exception to said terms and conditions may not be considered for award. Questions for clarification of terms and conditions are acceptable.

PROPOSALS CAN ONLY BE SUBMITTED ONLINE THROUGH OHIOBUYS. VISIT:

https://ohiobuys.ohio.gov/page.aspx/en/bpm/process_manage_extranet/40866

FOR INSTRUCTIONS:

OhioBuys provides the primary platform for Supplier partners to engage in procurement activities with the State of Ohio. For additional information on submitting proposals see the “Viewing and Responding to Solicitations” Learner Guide or the “Viewing and Responding to Solicitations” Supplier Training Video linked below.

Learner Guide

<https://procure.ohio.gov/static/pdf/S-LG.2%20Ohio%20Buys%20Viewing%20and%20Responding%20to%20Solicitations%20LG%20v2.1.pdf>

Supplier training materials may be found by following this link:

<https://procure.ohio.gov/bidders-and-suppliers/resources/bidder-and-supplier-training/04-ob-training>

Viewing and Responding to a solicitation:

<https://www.youtube.com/watch?v=K6iE32BUMJ0&feature=youtu.be>

Is your company already a registered vendor with the State of Ohio? Do you already have a vendor ID number? It is important that you provide your proposal using a vendor ID number if at all possible. The link below provides a means for looking up your supplier information and to be certain you are listed as a vendor contact for your company.

https://ohiobuys.ohio.gov/page.aspx/en/sup/supplier_directory_public

If you are new to OhioBuys, and your company is not registered as a vendor or payee with the State of Ohio, please see the document, “How to register as a payee” attached to this solicitation.

If you have any difficulties, please contact Ohio Shared Services at 1-877-644-6771.

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I. GLOSSARY

The following definitions are applicable to all components of the Contract:

- A. **Acceptance:** Approval and retention by the Ordering Agency of any products, supplies, services or other Deliverables, delivered to fulfill Contract requirements.
- B. **Contracting Agency:** The agency with which the Contractor enters into the Contract and that has the authority to enforce the Terms and Conditions of this Contract. The Contracting Agency may also be the Ordering Agency.
- C. **Default:** The omission or failure to perform any obligation under this Contract.
- D. **Deliverable:** Any Contractor-provided products, supplies, services, work or product described in the specifications of the Contract.
- E. **Ordering Agency:** The entity that purchases and accepts the products, supplies, services or other Deliverables under this Contract and that is responsible for payment. The Ordering Agency may also be the Contracting Agency.
- F. **State:** The State of Ohio, which may include the Contracting and/or Ordering Agency as applicable.
- G. **State Data:** All data and information provided by, created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State, including, but not limited to Sensitive Data. Sensitive Data means any type of data that presents a high or moderate degree of risk if released, disclosed, modified or deleted or disclosed without authorization. Sensitive Data includes, but is not limited to:
 - 1. Certain types of personally identifiable information (PII) that is also sensitive, such as medical information, social security numbers, and financial account numbers;
 - 2. Federal Tax Information (FTI) under IRS Publication 1075;
 - 3. Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA);
 - 4. Criminal Justice Information (CJI) under the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy and the Law Enforcement Automated Data System (LEADS) Policy; and
 - 5. Other types of information not associated with an individual such as security and infrastructure records, trade secrets, and business bank account information.
- H. **Time and Materials Contract:** A contract in which Contractor is paid the following: (1) an hourly rate for labor actually performed; and (2) if applicable and with prior approval by the Ordering Agency, for the cost of the materials or supplies actually used by the Contractor. Such rates and costs shall be established through Contractor's submission of a price sheet, written quote, estimate, or invoice, as approved by the State. Hourly rates may include wages, overhead, general and administrative expenses, and reasonable profit. Materials or supplies may include the Contractor's direct and indirect costs attributable to the work performed.

II. REGULATORY CONTRACT REQUIREMENTS

- A. **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- B. **APPROPRIATION OF FUNDS.** The State's funds are contingent upon the availability of lawful appropriations. If the General Assembly or any third-party who is providing funding 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. If appropriations are approved, the State may continue this Contract past the current biennium by issuing written notice of continuation to the Contractor. Any obligations of the State are subject to Section 126.07 of the Ohio Revised Code.
- C. **CAMPAIGN CONTRIBUTIONS.** Unless this Contract was solicited by competitive bid pursuant to Section 125.07 of the Ohio Revised Code, Contractor hereby certifies that all applicable parties are in full compliance with Section 3517.13 of the Ohio Revised Code.

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- D. **COMPLIANCE WITH LAW.** The Contractor must comply throughout the duration of the Contract with all applicable federal, state, local laws and Executive Orders while performing under this Contract.
- E. **CONFLICT OF INTEREST/ETHICS.** Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws or otherwise presents a conflict of interest.
- F. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery pursuant to Section 9.24 of the Ohio Revised Code. If the warranty is false on the date the parties signed this Contract, the Contract is void *ab initio*, and the Contractor shall immediately repay any funds paid under this Contract.
- G. **DEBARMENT.** Contractor represents and warrants that neither it, nor any of its subcontractors, are debarred from consideration for contract awards by any governmental agency. If this representation and warranty is found to be false, this Contract is void *ab initio*, and the Contractor shall immediately repay any funds paid under this Contract.
- 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 Contractor employees, while working on State property or performing work on behalf of the State, will not purchase, transfer, use, be under the influence of, or possess illegal drugs, non-medical cannabis (recreational marijuana), or alcohol, or abuse prescription drugs or medical marijuana in any way.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Section 125.111 of the Ohio Revised Code and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Plan must be submitted to and approved by the State of Ohio.

- J. **PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** No State Cabinet Agency, Board or Commission will enter into any contract to purchase services provided outside of the United States or that allows State Data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided to the State in the Contract.

Further, no State agency, board, commission, State educational institution, or pension fund will make any purchase from or investment in any Russian institution or company. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to Contractor for purchases or investments in a Russian institution or company in violation of this paragraph. The provisions of this paragraph will expire when the applicable Executive Order is no longer effective.

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

- K. **GOVERNING LAW.** 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.
- L. **INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including, but not limited to, any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and

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will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees that any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), Contractor shall have any individual performing services under the Contract complete and submit to the Ordering Agency the Independent Contractor/Worker Acknowledgement form, available at <https://www.opers.org/forms-archive/PEDACKN-Non-Member-Acknowledgment.pdf>.

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement form at the time Contractor executes this Contract shall serve as Contractor's certification that Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code.

- M. REGISTRATION WITH THE SECRETARY OF STATE.** Contractor certifies that it is one of the following:
1. A company that is properly registered with the Ohio Secretary of State; or
 2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
 3. Exempt from the registration requirements of the Ohio Secretary of State.
- N. TAXES.** Pursuant to Section 5739.02 of the Ohio Revised Code, the State is exempt from sales tax. Pursuant to Section 5741.02(C) of the Ohio Revised Code, the State is exempt from use tax.
- O. TRADE.** Pursuant to Section 9.76(B) of the Ohio Revised Code, Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Contract period.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States or transact business with any entity or individual subject to financial sanctions imposed by the United States. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, will acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those entities and individuals subject to sanctions can be found at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. These sanctions generally preclude most transactions involving Cuba, Iran, and Sudan, and most imports from Burma or North Korea.

- P. USE OF MBE AND EDGE VENDORS.** Section 125.081 of the Ohio Revised Code requires State agencies to set-aside purchases for Minority Business Enterprises (MBE) and Executive Order 2008-13S encourages use of Encouraging Diversity, Growth and Equity (EDGE) businesses. Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified MBE and EDGE vendors.
- Q. LEGAL REPRESENTATION AND RIGHTS.** The Ohio Attorney General is the chief law officer for the State of Ohio, its agencies, boards and commissions, and only the Ohio Attorney General has the authority to appoint outside legal counsel to represent the State. Contractor agrees that any provisions in this Contract or any documents incorporated by reference that provide or allow for outside legal representation to defend or settle claims on behalf of the State or provide for a third party to have sole control of a defense or settlement of a claim do not meet the requirements of state law and are considered stricken. Contractor also agrees that, unless specifically agreed to in writing by the State, any provisions that require or provide for a waiver of any legal rights, remedies, or litigation defenses (i.e., waiver of a jury trial) do not meet the requirements of state law and are considered stricken.
- R. STATUTE OF LIMITATIONS.** Statutes of limitations generally do not apply to actions brought by the State and any such provisions in this Contract or in any documents incorporated by reference are considered stricken.

III. CONTRACT CONSTRUCTION

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- A. **TERM OF CONTRACT.** The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the earliest of: (1) the ending date stated in the Contract; (2) the Contract is fully performed by both parties; (3) the Contract is canceled or terminated; or (4) the Contract expires at the end of a biennium unless continued by the State. Notwithstanding the foregoing, the expiration or early termination of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or ordered before the expiration or termination, or limit the State's rights in such, including any warranty services, licensed material, paid subscriptions, the support or maintenance thereof, or other services.

This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of the State. The State will issue a notice to the Contractor if the State decides to renew this Contract. The Contractor shall not obligate resources in anticipation of a renewal until notice is provided.

B. **CONTRACT AMENDMENTS / WAIVER.**

1. **AMENDMENTS.** No change to any provision of this Contract will be effective unless it is in writing and signed by the parties to the Contract. However, the State may document non-material changes in writing and provide notice to the Contractor. Unless specifically provided otherwise in this Contract or agreed to in writing by the Contracting or Ordering Agency, no terms or conditions included on a Contractor's quote or ordering document will be valid or enforceable against the State and are specifically excluded from this Contract. Further, no "click-through," "shrink-wrap," "browse-wrap," or other terms that have not been specifically negotiated by the Contractor and the State, whether before, on, or after the date of this Contract, will be effective to add or modify the terms of this Contract, regardless of any party's "acceptance" of those terms by electronic means. No State employee has the authority to modify, amend, or supplement this Contract through electronic means.

2. **WAIVER.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms or to any other terms of this Contract. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

- C. **ASSIGNMENT / DELEGATION.** The Contractor must 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. **BINDING EFFECT.** Subject to the limitations on assignment provided elsewhere in this Contract, this Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

- E. **LANGUAGE CONSTRUCTION.** This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

- F. **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

- G. **HEADINGS.** The headings in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

- H. **INJUNCTIVE RELIEF.** Nothing in this Contract is intended to limit the State's right to injunctive relief if such is necessary to protect its interests or to keep it whole.

- I. **NOTICES.** For any notice under this Contract to be effective, the notice must be made in writing and delivered to the appropriate contact provided in the Contract.

- J. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between these Standard Terms and Conditions and any provision incorporated by reference or included by the Contractor, these Standard Terms and Conditions will prevail.

- K. **PUBLICITY.** The Contractor shall not do the following without prior, written consent from the State:

1. Advertise that the Contractor is doing business with the State;

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

- L. **SEVERABILITY.** If any provision of the Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- M. **SUBCONTRACTING.** The State 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 the Contractor's subcontractors. The Contractor may not enter into subcontracts related to the Contract after award without written approval from the State. If any change occurs during the term of the Contract, that requires a change to identified subcontractors, the Contractor shall amend its list of subcontractors and request written approval from the State. The State reserves the right to reject any subcontractor submitted by the Contractor.

All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all sub-contracting and third-party manufacturer work performed or product delivered under the Contract. All agreements with subcontractors must incorporate this Contract by reference and include the following provisions: (1) the subcontractor agrees to be bound by all applicable terms and conditions of this Contract; and (2) the terms of this Contract prevail over any conflicting terms of the agreement with the subcontractor. The Contractor will be the sole point of contact with regard to all contractual matters.

- N. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, maintenance, publicity, warranties and limitations on damages shall survive the termination of this Contract. In addition, to the extent necessary to carry out the purpose of this Contract, all other terms, conditions, representations or warranties contained in this Contract will survive the expiration or termination of this Contract.
- O. **COUNTERPARTS.** This Contract may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IV. ORDER AND PAYMENT PROVISIONS

- A. **CERTIFICATION OF FUNDS/PURCHASE ORDER REQUIREMENTS.** None of the duties or obligations in this Contract are binding on the State, and the Contractor will not begin performance on this Contract, until all of the following conditions are met:
1. All statutory provisions under the Ohio Revised Code have been met.
 2. All necessary funds are made available by the appropriate Ordering Agency.
 3. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.
 4. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate Ordering Agency, which is certification that the above requirements have been met.
- B. **CONTRACT ORDERS.** Ordering Agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by Ordering Agencies by telephone, electronically, in person, payment card (if applicable) or purchase order from authorized employees of the Ordering Agency. Neither the Ordering Agency nor the Contracting Agency will be responsible for orders placed by unauthorized employees. The Contractor must ensure that any entity placing an order under this Contract has the authority to do so. If Contractor accepts an order from an entity that does not have the authority to make a purchase under this Contract, Contractor will be in breach of this Contract and the order will not be valid under this Contract.

If Contractor's quote or ordering document contains or incorporates by reference any terms or conditions other than a description of the goods or scope of services and the prices for those goods and/or services, those terms or conditions are excluded from this Contract and are of no effect.

- C. **INVOICE REQUIREMENTS.** The Contractor or dealer, authorized to submit invoices, must submit an invoice to the office designated in the purchase order. The Contractor will only be compensated for the Deliverables

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accepted by the State. To be a proper invoice, the invoice must include the following:

1. The purchase order number authorizing the delivery of supplies or services;
2. State of Ohio Contract Number (if applicable);
3. Agency Name;
4. Agency Billing Address;
5. Delivery location of supplies or services;
6. Contractor Name;
7. Contractor Address;
8. Contractor's Unique Invoice Number;
9. Date that services were provided or that supplies were delivered;
10. Itemization of supplies or services provided, including cost;
11. For leases, the invoice must also include the payment number (e.g., 1 of 36);
12. For Time and Materials Contracts, the invoice must reflect labor hours actually worked and, if applicable, supplies used; and
13. Clear statement of total payment expected.

D. PAYMENT DUE DATE AND PROCESS. Unless otherwise stated in this Contract and in accordance with Section 126.30 of the Ohio Revised Code, payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The State's preferred method of payment is by electronic funds transfer. However, the Ordering Agency may also make payment by State of Ohio payment card or by warrant issued by the Office of Budget and Management. At the time of Contract award, Contractor must be able to accept all forms of payment from the State and Ordering Agency.

E. REIMBURSABLE EXPENSES. The State will not pay reimbursable expenses unless specifically identified in the Contract. The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable.

F. TRAVEL. Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with Section 126.31 of the Ohio Revised Code and Rule 126-1-02 of the Ohio Administrative Code.

V. LIABILITY PROVISIONS

A. GENERAL REPRESENTATIONS AND WARRANTIES. The Contractor warrants that:

1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, 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 the Contractor's standard business practices.
4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
5. The Deliverables comply with all governmental, environmental and safety standards.
6. The Contractor has the right to enter into this Contract.
7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
8. 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.
9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to the State.
10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.
11. The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State such that the Project duplicates the work done or to be done under the other contracts.
12. For one year from the delivery date of any products or software, the products or software will be free of

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material defects and free of viruses, including the media on which it is delivered, if applicable.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above, or 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 in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount 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.

Any other express warranties offered by the Contractor shall be a minimum of one year from acceptance or the Contractor's standard warranty whichever is longer.

- B. INDEMNITY.** The Contractor must indemnify the State for all liability and expense arising out of the performance of this Contract, provided that such liability or expense is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.

Contractor must indemnify the State for all liability and expense resulting from the unauthorized disclosure or loss of State Data. Damages resulting from the unauthorized disclosure or loss of State Data shall be considered direct damages under this Contract and include, but are not limited to, the following: (i) expenses for legally-required notification of impacted individuals; (ii) responding to inquiries from such notifications; (iii) government fines and penalties assessed against the State; (iv) costs to the State for investigations, audits or forensic services as applicable related to the disclosure or loss; (v) mitigation measures, including 12 months of credit monitoring and identity theft protection for individuals impacted by a disclosure; (vi) costs to the State to reconstruct data that was lost or to repair any damaged State information technology infrastructure; and (vii) other such expenses incurred by the State as a result of the unauthorized disclosure or loss of State Data. Regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection services on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Contractor's indemnification obligations under this paragraph apply whether the expenses or costs incurred by the State are performed by State employees or hired contractors. Contractor must also work with the State to directly notify impacted individuals or persons as required by Ohio Revised Code Chapter 1349.

The Contractor must also indemnify, release, protect, and hold the State harmless from any claim of infringement of a copyright, patent, trade secret, or similar intellectual property right 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. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions within an acceptable timeframe:

1. Modify the Deliverable so that the Deliverable is no longer infringing;
2. Replace the Deliverable with an equivalent or better item;
3. Acquire the right for the State to use the infringing Deliverable as intended; or
4. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.

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 Ohio Attorney General.

- C. INSURANCE.** Until all obligations under this Contract are satisfied, and without limiting Contractor's indemnification obligations herein, Contractor shall procure and maintain, for the duration of the Contract, the insurance policies set forth below. Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. Contractor shall also procure and maintain insurance for claims arising out of their services including, but not limited to, loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. All commercial insurance required shall be provided by insurers with a rating of not less than A-VII from A.M. Best or a comparable rating agency.

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Coverage shall be at least as broad as:

1. **Commercial General Liability:** written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit. The State of Ohio, its officers, officials and employees are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
2. **Automobile Liability:** covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation insurance** as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and **Employer's Liability Insurance** with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold the State harmless from loss or liability for such.

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

Pursuant to Ohio Revised Code 2743.02(D), all applicable insurance or other means of recovery shall apply to any claim arising from the Contractor's activities relating to this Contract on a primary basis. The insurance or self-insurance maintained by the State shall not contribute to claims made due to the Contractor's negligence, errors, or omissions. No subrogation demands shall be made against the State of Ohio, except where there is negligence on the part of the State, and any such demands shall be reduced by all collateral recovery sources available to or received by the claimant.

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

Notice of Cancellation. Contractor must provide the State of Ohio with written notice of cancellation or material change to any insurance policy required above as soon as possible and must use best efforts to notify the State at least 30 days in advance of such cancellation or material change. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Contract shall be a breach of this Contract.

Deductibles and Self-Insured Retentions. Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention.

Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

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

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

Subcontractors. Contractor must require and verify that all subcontractors maintain insurance with sufficient limits for the nature of the products or services they are providing, and Contractor shall ensure that State of Ohio is an additional insured on commercial general liability insurance required from subcontractors. Contractor will indemnify the State for damages that exceed a subcontractor's policy limits.

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

D. LIMITATION OF LIABILITY. 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 damages.
2. Notwithstanding any other limitation provisions, the Contractor agrees that the Contractor shall be liable for all direct loss or damages due to the negligence or other tortious conduct of the Contractor under this Contract.
3. Any limitation provisions contained in the documents and materials incorporated by reference into this Contract are considered stricken and of no force and effect.

E. PRODUCT RECALL. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or in the case of consumable product, found to be unfit for human consumption by the packer, processor, manufacturer or by any state or federal regulatory agency, the Contractor shall notify the Contracting Agency and all Ordering Agencies within two business days after notice has been given. The Contractor shall, at the option of the Ordering Agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. The 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, the Contractor may be required to reimburse storage and handling fees to be calculated from time of delivery and acceptance to actual removal. The 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.

VI. PERFORMANCE AND COMPLIANCE

A. AUDITS. The Contractor must keep all financial records related to this Contract in a manner consistent with Generally Accepted Accounting Principles (GAAP) or equivalent accounting principles. Additionally, the Contractor must keep separate business records for this Contract, 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 Contract and until the expiration of three (3) years after final payment under this Contract, the Contractor agrees to provide the State, or any authorized representatives 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 Contract.

The Contractor must, for each subcontract in excess of \$25,000.00, require its subcontractors to agree to the same provisions of this Section. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to contracts where federal funds are used and the federal government requires audits of all subcontracts regardless of the amount of the contract.

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

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to recover damages as well as the cost of the audit.

- B. F.O.B. DESTINATION/PRE-PAID/ALLOWED.** The Contractor must provide Deliverables under this Contract F.O.B. Destination/Pre-Paid/Allowed. The place of destination will be specified by the Ordering Agency on the agency's purchase order or other ordering document. Cost of the freight must be borne and paid by the Contractor unless otherwise stated.

All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State. Unless otherwise provided in this Contract, the State will determine whether the Contractor provided each Deliverable required in this Contract and has fully met all work requirements of this Contract. Title to any Deliverables will pass to the State on Acceptance of the Deliverable.

- C. RETURNED GOODS.** When the use of this Contract involves the purchase of goods, the following applies:

1. Returned 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 returned 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.
2. For orders of custom manufactured items, the Contractor must provide a production sample of the item to the Ordering Agency for acceptance. The production sample must 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. 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.
3. Returned 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 Ordering 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. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

- D. CUSTOM DELIVERABLES.** All custom work done by the Contractor and covered by this Contract, including any software modifications, and documentation, will belong to the State with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and otherwise distribute all Pre-existing Materials that are incorporated in any custom- developed Deliverable, including distribution to third parties as required by funding mandates. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable. Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

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- E. FORCE MAJEURE (EXCUSABLE DELAY).** Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. For purposes of this Section, the term "force majeure event" includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.

If the State or the Contractor cannot perform any part of its obligations under this Contract because of force majeure, that party is excused from those obligations, to the extent that performance is prevented by the force majeure event and that party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event. If there is only a delay in performance, such delay may extend only for that time lost because of the force majeure event. If a party is unable to perform those above-referenced obligations, it must also do the following:

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information of the force majeure event;
3. Provide a proposed revised performance date to make up for performance delays due to the force majeure event. When applicable, the revised schedule must provide for performance time not to exceed the time lost as a result of the force majeure event.

- F. CONTRACT PERFORMANCE MANAGEMENT.** The Contracting and Ordering Agencies are responsible for administering and monitoring the Contractor's compliance and performance on this Contract. Therefore, the Contractor must respond to complaints about performance of the obligations in this Contract to such entities in a timely manner. If the Contractor fails to perform any one of its obligations under this Contract, it will be in default.

If the Contractor fails to satisfactorily correct the performance or compliance issue within the time designated by the Agency, the Contracting Agency may employ all available options and remedies, including termination of the Contract if necessary, to resolve the Contractor's continued nonperformance or noncompliance.

- G. QUALITY ASSURANCE.** At the option of the Contracting or Ordering Agency, samples may be taken from deliveries made and submitted for laboratory tests. The Ordering Agency will bear the cost of testing if samples are in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the terms and conditions of the Suspension/Termination provision of this Contract will be applied.

H. CONTRACT REMEDIES.

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the default, for every day that the default is not cured by the Contractor.
3. **Right to Withhold or Offset.** The Ordering Agency may withhold payment or set off the amount of any liquidated damages, other damages or claims for damages, or any other obligation of the Contractor or its subsidiaries to the Ordering Agency, including any amounts the Contractor owes to the Ordering Agency under this Contract, against any payments due to the Contractor under this Contract.

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

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

1. Contract or Order Suspension.

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

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

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

2. Contract or Order Termination.

- a. **Termination for Convenience.** The Contracting Agency may terminate this Contract, or an Ordering Agency may terminate an order placed under this Contract, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the Ordering Agency or the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract or order had been fully performed, and the State will not be entitled to any refund of fees already paid by the State before the date of termination. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.
- b. **Termination for Cause.** If the Contractor fails to perform any of its obligations under this Contract or an order under this Contract, the Contractor will be in default, and the Contracting Agency may terminate this Contract or an Ordering Agency may terminate an order in accordance with this Section. For purposes of this subsection (b), the term "Agency" means both the Contracting Agency and the Ordering Agency interchangeably. If this Contract or an order under this Contract is terminated for cause, the Agency will be entitled to a pro rata refund of any prepaid fees for the applicable orders subject to the termination. Termination for cause includes but is not limited to:
 - i. **Termination for Persistent Default.** An Agency may terminate for defaults that are cured but are persistent. "Persistent" means three or more defaults. After providing notification to the Contractor of its third default, an Agency may terminate without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.
 - ii. **Termination for Endangered Performance.** An Agency may terminate if it determines that the performance is endangered through no fault of its own.
 - iii. **Termination for Financial Instability.** An Agency may terminate if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the Agency finds other

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evidence of the Contractor's financial instability.

- iv. **Termination for Delinquency, Violation of Law.** An Agency may terminate if it determines that the Contractor is delinquent in its payment of federal, state or local obligations, including but not limited to taxes, workers' compensation insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. An Agency also may terminate if it determines that the Contractor has violated any law during the performance of this Contract.
 - v. **Termination for Subcontractor Default.** An Agency may terminate for default caused by the Contractor's subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.
 - vi. **Termination for Failure to Retain Certification, License, and Permits.** An Agency may immediately terminate if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications (Including CRP, MBE, EDGE and Veteran Friendly Business Enterprise certifications), and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.
- J. **TIME IS OF THE ESSENCE.** Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with the Ordering Agency. If the Contractor is not able to or does not provide the Deliverables to the Ordering Agency or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, the State may obtain any remedy as described herein or any other remedy at law.
- K. **OHIOPBUYS.** This Contract may become part of OhioBuys, an electronic procurement system which provides electronic contract and catalog hosting and management services. Ordering Agencies access this system to place orders for the procurement of goods and services using State of Ohio contracts. When the Contract becomes part of OhioBuys, the Contractor agrees to establish, maintain and support its contract and catalog in OhioBuys.

VII. DATA AND INFORMATION CONTROL

- A. **CONFIDENTIALITY.** The parties may disclose or learn of information, documents, data, records, or other material that the disclosing party considers confidential ("Confidential Information") in the performance of this Contract. The receiving party must treat the Confidential Information as such if it is so marked, otherwise defined as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of either party, the public, other parties, or individuals or organizations about whom the disclosing party keeps information. Title to the Confidential Information and all related materials and documentation remains with the disclosing party. The receiving party may only use the Confidential Information solely to perform its obligations under this Contract and may not use or disclose any Confidential Information received as a result of this Contract without the written permission of the disclosing party. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interest of the public, other parties, or individuals or organizations about whom the State keeps information is confidential. In addition, the receiving party may not use or disclose any documents or records excluded by Ohio law from public records disclosure requirements.

The receiving party's obligation to maintain the confidentiality of the Confidential Information will not apply where the information:

1. Was already in the receiving party's possession without the obligation of confidence;
2. Is independently developed by the receiving party with documentary evidence to support the independent development;
3. Is or becomes publicly available without breach of this Contract, except as provided in the next full paragraph;
4. Is rightfully received by the receiving party from a third party without an obligation of confidence;
5. Is disclosed by the receiving party with the written consent of the disclosing party; or
6. Is released in accordance with a valid order of a court or governmental agency, provided that the receiving party:

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- a. Notifies the disclosing party of such order immediately upon receipt of the order; and
- b. Makes a reasonable effort to assist the disclosing party in obtaining a protective order, if requested, from the issuing court or agency limiting disclosure and use of the Confidential Information to the portion of the Confidential Information needed to satisfy the original order of production and solely for the purposes intended to be serviced by the order.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the receiving party shall not disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, item 3 above does not apply, and the receiving party must treat such sensitive personal information as Confidential Information whether it is available elsewhere or not. The receiving party must restrict circulation of Confidential Information within its organization and then only to people in the receiving party's organization that have a need to know the Confidential Information to perform under this Contract.

The receiving party must return all Confidential Information provided by the disclosing party, or if return of the Confidential Information is not possible, destroy the Confidential Information upon termination or expiration of this Contract. Upon request, the Contractor must provide certification or written confirmation to the State of such return or destruction of the Confidential Information. Notwithstanding the foregoing, the receiving party may keep a copy of the Confidential Information to comply with contractual, legal, or record keeping obligations, and any such retained Confidential Information is subject to the requirements of this Contract for so long as the receiving party has the Confidential Information in its possession.

The receiving party will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the receiving party may be required to have all of its personnel and subcontractors who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The receiving party will be liable for the disclosure of any Confidential Information not specifically authorized by this Contract. The parties agree that the disclosure of Confidential Information may cause the disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and the receiving party agrees that in the event of a breach of the receiving party's obligations hereunder, the disclosing party shall be entitled to temporary and permanent injunctive relief to enforce this Contract without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

This Contract, including all terms and conditions, pricing, and attachment or exhibits, is not Confidential Information.

- B. PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION.** The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that this Contract, as well as any information, Deliverables, records, reports, and financial records related to this Contract are presumptively deemed public records. The Contractor understands that these records will be made freely available to the public unless the State determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure. The Contractor must comply with any direction from the State or an Ordering Agency to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information.
- C. SECURITY AND SAFETY RULES.** When using or possessing State Data or accessing State networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State rules, policies, and regulations regarding State-provided IT resources, data security and integrity. When on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

The State may require the Contractor, its employees, subcontractors and agents to sign a confidentiality agreement and policy acknowledgements and have a background check performed before accessing facilities, data, or systems. Each Ordering Agency may require a different confidentiality agreement or acknowledgement, and the Contractor, its employees, subcontractors and agents may be required to sign a different confidentiality agreement or acknowledgement for each Ordering Agency. The Contractor must immediately replace anyone who refuses to sign a required confidentiality agreement or acknowledgement or have a background check performed.

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- D. **USAGE REPORTS.** At no cost to the State and in addition to other reports required by the Contract, the Contractor shall be required to provide monthly, quarterly, bi-annual or annual usage reports as requested by all Contracting or Ordering Agencies. The report may include customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information. Electronic media is the preferred method for these reports. Failure to provide the requested reports may be deemed as an event of default.

REQUIREMENTS FOR PROPOSALS

PROPOSAL FORMAT. Each Proposal must include sufficient data to allow the State to verify the total cost for the assessment and all of the Offeror's claims of meeting the requirements. Your Proposal must respond to every request for information listed below:

1. Certification and Licensure
2. Work Plan
3. Support Requirements
4. Conflict of Interest Statement
5. Proof of Insurance
6. Payment Address
7. W-9 Form and Supplier Registration
8. Affirmative Action Plan
9. Prohibition of the Expenditure of Public Funds for Offshore Services
10. Cost Summary Form
11. Preference Certification Statements

REQUIREMENTS

1. Certification. Each Proposal must include the following certification signed by the individual Offeror.

(Insert Company name) affirms they are the prime Offeror.

(Insert Company name) affirms it shall not and shall not allow others to perform work or take data outside the United States without express written authorization from ADJ.

(Insert Company name) affirms that all personnel provided for the assessment, who are not United States citizens, will have executed a valid I-9 form and presented valid employment authorization documents.

(Insert Company name) affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.

(Insert Company name) agrees that it is a separate and independent enterprise from the State of Ohio, the Agency, and the Adjutant General's Office. *(Insert Company name)* has a full opportunity to find other business and has made an investment in its business. Moreover *(Insert Company name)* will retain sole and absolute discretion in the judgment of the manner and means of carrying out its obligations and activities under the Contract. This Contract is not to be construed as creating any joint employment relationship between *(Insert Company name)* or any of the personnel provided by *(Insert Company name)*, and the ADJ.

(Insert Company name) affirms that the individuals supplied under the Contract are either: (1) employees of *(Insert Company name)* with *(Insert Company name)* withholding all appropriate taxes, deductions, or contributions required under law; or (2) independent contractors to *(Insert Company name)*.

If the Offeror's personnel are independent Contractors to the Offeror, the certification must also contain the following sentence:

(Insert Company name) affirms that it has obtained a written acknowledgement from its independent Contractors that they are separate and independent enterprises from the State of Ohio and ADJ for all purposes including the application of the Fair Labor Standards Act, Social Security Act, Federal Unemployment Tax Act, Federal Insurance Contributions Act, the provisions of the Internal Revenue Code, Ohio tax law, worker's compensation law and unemployment insurance law.

If the Offeror qualifies as a Veteran Friendly Business Enterprise as defined by ORC 9.318 and OAC 123:5-1-01 (KK), the certification must also contain the following sentence:

(Insert Company name) affirms that they are certified as a Veteran Friendly Business Enterprise as defined by Ohio Revised Code 9.318 and Ohio Administrative Code 123:5-1-01(KK).

2. Work Plan. The Work Plan must demonstrate an understanding of the requirements of the assessment objectives. Provide a comprehensive Work Plan that gives ample description and detail as to how it proposes to accomplish this assessment and what resources are necessary to meet the performance measures. The State seeks insightful responses that describe proven state-of-the-art methods. Recommended solutions should demonstrate that the Offeror would be prepared to immediately undertake and successfully complete the required tasks. The Offeror's Work Plan should clearly and specifically identify key personnel assignments. (NOTE: The staffing plan should be consistent with the Work plans). Additionally, the Offeror should address potential problem areas, recommended solutions to the problem areas, and any assumptions used in developing those solutions.
3. Support Requirements. The Offeror must describe the support it wants from the State. Specifically, the Offeror should address the following:
 - a. Nature and extent of State support required in terms of staff roles, percentage of time available, etc.
 - b. Assistance from State staff and the experience/qualification level required; and
 - c. Other support requirements.

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

4. Conflict of Interest Statement. Each Proposal must include a statement indicating whether the Offeror or any people that may work on the Project through the Offeror have a possible conflict of interest (e.g., employed by the State of Ohio, etc.) and, if so, the nature of that conflict. The State has the right to reject a Proposal in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.
5. Proof of Insurance. In this section, the Offeror must provide the certificate of insurance required by the Standard Terms & Conditions, Part V, C. The policy may be written on an occurrence or claims made basis.
6. Payment Address. The Offeror must provide the address to which payments to the Offeror will be sent.
7. W-9 Form and Supplier Registration. The Offeror must complete Federal Form W-9, Request for Taxpayer Identification Number and Certification form. The Offeror must supply a redacted copy of this form. If a subsidiary company is involved, Offerors must provide a redacted W-9 for both the parent and subsidiary companies. If non-redacted copies are required after award, ADJ will make that request later. In addition, the Offeror must be registered as a supplier with the State through the Supplier Portal. Registration can be completed or confirmed at: <https://supplier.ohio.gov>
8. Affirmative Action. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using:

<https://development.ohio.gov/business/construction-compliance/affirmative-action-program#AffirmativeActionProgramVerificationGoodsandServices>

Approved Affirmative Action Plans can be found by going to the Minority Business Development Division (MBDD) Web site:

<https://eodreporting.oit.ohio.gov/affirmative-action>

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

9. Offshore Services. The Offeror must complete the Contractor/Subcontractor [Affirmation and Disclosure](#) form affirming the Offeror understands and will meet the requirements of the above prohibition. During the performance of this assessment, the Offeror must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver from the State has been attained to perform the services outside the United States.

10. Cost Summary Form (or Quote). All prices, costs, and conditions outlined in the proposal shall remain fixed and valid for acceptance for 120 days, starting on the due date for proposals. The awarded proposal must hold the accepted prices and/or costs for the initial term of the contract. No price change shall be effective without prior written consent from ADJ. The State shall not be liable for any costs the Offeror does not identify in its Proposal.

11. Preference Certification Statements. Offerors claiming preference for Domestic Source End Products, the Ohio (Buy Ohio) preference, and/or Veteran Friendly Business Enterprise (VBE) must complete the [Preference Certification Statements](#) form.