

INVITATION TO BID

ITB NUMBER: ACQ1044
DATE ISSUED: April 16, 2021

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

Replacement Handheld Scanners for Ohio Department of Commerce, Division of Liquor Control

INQUIRY PERIOD BEGINS: April 16, 2021
INQUIRY PERIOD ENDS: April 30, 2021
OPENING DATE: May 10, 2021
OPENING TIME: 1:00 P.M.
OPENING LOCATION: Department of Administrative Services
General Services Division
4200 Surface Road
Columbus, Ohio 43228

This ITB consists of five (5) parts and nine (9) attachments, totaling forty-three (43) consecutively numbered pages. Please verify that you have a complete copy.

PART ONE: EXECUTIVE SUMMARY

Purpose. This is an Invitation to Bid (“ITB”) under Section 125.07 and 125.18 of the Ohio Revised Code (the “Revised Code”) and Rule 123:5-1-07 of the Ohio Administrative Code (the “Administrative Code”). The Ohio Department of Administrative Services (the “Agency”), Enterprise IT Contracting, is soliciting bids (“Bids”) for Replacement Handheld Scanners, this ITB is the result of that initiative.

ITB Process. If a participating vendor (“Bidder”) submits a suitable Bid in response to this ITB, the State of Ohio (the “State”), through the Department of Administrative Services, may enter into a contract (the “Contract”) to have the selected Bidder (the “Contractor”) provide all or part of the Hardware & Services. This ITB provides details on what is required to submit a Bid for the Hardware & Services, how the State will evaluate the Bids, and what will be required of the Contractor under the Contract.

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

Once awarded, the term of the Contract will be from the award date until the Contractor’s performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or June 30, 2023, whichever is sooner. The State may renew this Contract for up to two (2) additional two-year terms, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum duration through all renewals will be from award date until June 30, 2027. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

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

Background. The State of Ohio seeks to replace all Division of Liquor Control (DOLC)-purchased scanners currently in use that are older Honeywell CK3 models running an outdated Windows Mobile Operating System. Currently 600+ hand-held scanners are in use by Ohio’s 488 liquor control agencies and DOLC’s Auditing Team. The scanners, in combination with the RF-Smart Software, play a critical role in liquor inventory management, enabling inventory tracking of product receiving, shipping, and auditing. The DOLC is seeking to replace all Honeywell CK3 scanners with Honeywell CK65 scanners, (Model # required: CK65-L0N-BSC210F), running an Android operating system. This model has been evaluated by DOLC and would allow for the reuse of some accessories already purchased that do not need to be replaced (e.g., docking stations).

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

- The State makes no guarantee that the State will make any purchases pursuant to this ITB, or that the actual quantities the State purchases under the Contract will meet the estimates provided in the Cost Summary.
- Per-unit pricing must include delivery.
- Each order must be delivered to the Ohio based location, as specified by the purchasing agency, within 90 days after receiving a purchase order.

Cooperative Purchasing Members (“CPM”) are entities that qualify for participation in the State’s cooperative purchasing program under Section 125.04 of the Ohio Revised Code and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the Revised Code, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They also may include any Ohio county

board of elections, private fire companies, private nonprofit emergency medical service organizations, and chartered nonpublic schools.

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

Dates:

Firm Dates

ITB Issued:	April 16, 2021
Inquiry Period Begins:	April 16, 2021
Inquiry Period Ends:	April 30, 2021 at 8:00 a.m.
Bid Due Date:	May 10, 2021 at 1:00 p.m.

Estimated Dates

Contract Award:	May 2021
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Delivery Date:

Within 90 days after receiving a purchase order

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

PART TWO: STRUCTURE OF THIS ITB

Organization. This ITB is organized into five (5) parts and nine (9) attachments. The parts and attachments are listed below. All documents listed below are a part of and incorporated into this ITB.

Parts:

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

Attachments:

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

PART THREE: GENERAL INSTRUCTIONS

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

Contacts. The following person will represent the State during the ITB process:
Procurement Representative:

Kim Lassahn
Department of Administrative Services
Enterprise IT Contracting
4200 Surface Rd.
Columbus, Ohio 43228

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

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

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

- Access this procurement via the State's Procurement Website and on the right, select "**Bid Opportunities Search**";
- In the "**Document/Bid Number**" field, enter the ITB number **ACQ1044** of this ITB (the ITB number begins with the letter "A");
- Select "**Invitation to Bid**" from the Opportunity Type dropdown;
- Click the "Search" button;
- On the Opportunity Search Results page, click on the hyperlinked Bid Number;
- On the Opportunity Details page, click the "Submit Inquiry" button;
- On the document inquiry page, complete the required "Personal Information" section by providing:
 - First and last name of the prospective Bidder's representative (the Bidder Representative) who is responsible for the inquiry,
 - Name of the prospective Bidder,
 - The Bidder Representative's business phone number, and
 - The Bidder Representative's email address;
- Type the inquiry in the space provided including:
 - A reference to the relevant part of this ITB,
 - The heading for the provision under question, and
 - The page number of the ITB where the provision can be found;
- Enter the Confirmation Number at the bottom of the page
- Click the "Submit" button.

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

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

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

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

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

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

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

Bid Submittal. Each Bidder must submit two (2) completed, sealed, and signed copies of its Bid in an opaque package. The Bidder must clearly mark the exterior of the package "**Replacement Handheld Scanners Bid – ACQ1044**" on the outside.

In each sealed package, the Bidder must include:

1. Two (2) completed and signed copies of its Bid.
2. An electronic copy of everything contained within the package on a flash drive (Microsoft Office or PDF format, as appropriate).

If there is a discrepancy between the hard copy and the electronic copy of the Bid, the hard copy will control, and the State will base its evaluation of the Bid on the hard copy.

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

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

The State may reject any Bid or unsolicited modifications that it receives after the deadline. A Bidder that mails its Bid must allow for adequate mailing time to ensure its timely receipt. Additionally, Bidders must allow for potential delays due to increased security. The Bid Desk accepts packages between the hours of 7:30 A.M. to 5:00 P.M. Monday through Friday, excluding State Holidays. No deliveries will be accepted before or after these hours without prior arrangements

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

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

All Bids and other material that Bidders submit will become the property of the State and may be returned only at the State's option. Bidders should not include any proprietary information in a Bid or in other material

submitted as part of the evaluation process because the State will have the right to use any materials or ideas submitted without compensation to the Bidder. Additionally, all Bids will be available to the public after the Contract award via a Public Records Request.

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

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

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

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

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

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

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

Affirmation and Disclosure. The bidder must complete and submit the Certification contained in Attachment Nine. Certification affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

PART FOUR: BID EVALUATION

Bid Opening. The State will open the Bids on the Bid due date at 1:00 p.m. and Bidders may attend the opening. The State will open the Bids in the presence of a representative of the Ohio Auditor of State. After the opening, the Procurement Representative will begin the initial review of the Bids.

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

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

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

5. Determination of responsibility
6. Award

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

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

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

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

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

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

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

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

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

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

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

References must be provided to demonstrate the Bidder's ability to provide the equipment required by the State. References will be verified. References provided by the Bidder must agree to be interviewed by representatives of the State.

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

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

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

Tie Bids. If two or more Bidders offer the same cost and both are determined to be responsive and responsible, the State may break the tie with the higher percentage discount additional category discounts listed by the Bidder on the Cost Summary sheet. If a further tie breaker is required, the State may break the tie with the average of the volume discount percentages listed by the Bidder on the Cost Summary sheet. If after these tie breakers are applied and a further tie breaker is required, the State will break the tie with the flip of a coin, or the State may award to all responsive and responsible Bidders offering the same cost. If selection is made by a coin flip, then the State may assign "heads" and "tails" to the Bidders. The coin flip may be conducted in the presence of the Bidders, if they elect to be present. The flip will be the final determination of the lowest, responsive, and responsible Bidder.

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

Estimated Quantities. Unless otherwise expressly provided in this ITB, quantities of Hardware given in this ITB are estimates only. The State makes no guarantee that the State will make any purchases pursuant to this ITB or that the actual amount of Hardware the State purchases under the Contract will meet the estimates. Any estimated quantities are provided in Attachment One, and the selected Bidder must be prepared to meet those quantities. The State may procure additional items subsequent to the initial purchase. Additional purchases will be procured at the single unit cost as listed in the Cost Summary.

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

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

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

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

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

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

PART FIVE: AWARD OF THE CONTRACT

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

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

Contract. A sample contract is included in Attachment Five. The State will issue an original Contract to the Contractor upon award of this ITB. The Contractor will sign and return the original Contract as instructed

by the State. The Contract will bind the State only when the State's duly authorized representative signs all copies of the Contract and returns one to the Contractor and all other prerequisites identified in the Contract have occurred.

If this ITB results in an award, the Contract will consist of the one-page Contract in its final form, together with the documents listed in the one-page Contract, including this ITB with all attachments, written amendments to this ITB, the Contractor's accepted Bid, and written, authorized amendments to the Contractor's Bid. It also will include any materials incorporated by reference in the above documents under the Contract. The general terms and conditions for the Contract are contained in Attachment Three to this ITB and incorporated herein by reference. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. The one-page Contract;
2. This ITB, as amended;
3. The documents and materials incorporated by reference in the ITB;
4. The Contractor's Bid, as amended, clarified, and accepted by the State; and
5. The documents and materials incorporated by reference in the Contractor's Bid, to the extent they are not inconsistent with any of the foregoing.

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

The term of the Contract will be from the award date until the Contractor's performance under the Contract is completed to the satisfaction of the State and the Contractor is paid or June 30, 2023, whichever is sooner. The State may renew this Contract for up to two (2) additional two-year terms, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum duration through all renewals will be from award date until June 30, 2027. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

ATTACHMENT ONE: CONTRACT REQUIREMENTS

This attachment describes the Hardware and what the Contractor must do to perform under the Contract. It also provides specifications for the Hardware under the Contract and gives performance and delivery dates, as applicable.

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

- The State requires Bidders to arrange procurement and delivery for the specified hardware;
- Hardware must be delivered to an Ohio based location specified by the purchasing agency at the time of order; and
- The Contractor must provide documentation confirming they are an authorized Honeywell reseller.

Performance Dates. The equipment must be delivered within 90 days after receiving a purchase order. The Additional Service Requirements must begin upon delivery of the equipment through June 30, 2023 and for two (2) additional two-year terms if the Contract is renewed. The term of the Contract will be from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2023, whichever is sooner. The State may renew this Contract for up to two (2) additional two-year terms, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum duration through all renewals will be from award date until June 30, 2027.

Specifications. The Division of Liquor Control is seeking to replace all CK3 scanners with Honeywell CK65 scanners, (**Model # required: CK65-L0N-BSC210F**), running an Android operating system. This model has been evaluated by the Division of Liquor Control and would allow for the reuse of some accessories already purchased that do not need to be replaced (e.g., docking stations).

Service Requirements. The handheld scanner Service Plan must include Honeywell's Edge Service, Platinum, 2 Day, 5-year plan and all Additional Services listed below:

1. Device Setup and Configuration for RF-SMART Software.
2. Dead on Arrival Testing and Replacement when needed.
3. Asset Tagging and Reporting.
4. Testing-device and RF-SMART Software.
5. Golden Image Creation and Ongoing Management – Maintain/update current software version and device configuration for use with RF-SMART AX Retail User License.
6. Deployment planning, advisement and execution.
7. 24x7 Helpdesk Support for Division of Liquor Control's centralized team (not for individual liquor agencies).
8. Vendor Managed Spare Pool Management - fully configured/tested, site-specific, software configured, field ready, maximum 1-day turnaround for spare pool replacement device, shipped to individual liquor agency locations. See ohlq.com/locations.
9. Device Kitting – device setup and configuration for RF-SMART for a specific site along with accessories packaged.

Bidders must offer only the specific equipment/services and quantity listed below:

Part Number	Description	Quantity
CK65-L0N-BSC210F	Honeywell CK65 scanners, standard range, with spare battery. OS required: Android	641 *See "Optional Quantity" section below
SVCCK65-SP3N N CK65	Edge Service, Platinum, 2 Day, 3 year	641 *See "Optional Quantity" section below
2-year Service Agreement	Software installation/configuration/ device setup and on-going management for RF-SMART AX Retail User Licenses. See Additional Services listed in Service Requirements above.	641 *See "Optional Quantity" section below

Optional Quantity:

Pricing per unit provided in the bid may be extended to approximately 100 additional units for the term of the contract and all subsequent renewals.

ATTACHMENT TWO: REQUIREMENTS FOR BIDS

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

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

Each Bid must contain the following:

1. Cover letter
2. Supplier Information Form (OBM-5657)
3. Bidder Certification Form (Attachment Six)
 - Honeywell Reseller Documentation
4. Proof of Insurance
5. W-9 Form
6. Affirmative Action
7. References
8. Certification (Buy American, Buy Ohio, Veteran Preference) (Attachment Seven)
9. Cost Summary (Attachment Eight)
10. Affirmation and Disclosure Form (Attachment Nine)

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

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

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

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

- **Honeywell Reseller Documentation** – Bidder must include documentation from Honeywell showing they are an authorized reseller in good standing.

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

W-9 Form. The Bidder must submit at least one originally signed W-9. A current W-9 form is available at www.irs.gov.

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

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

Certification (Buy American, Buy Ohio, Veteran Preference). The Bidder must complete and submit the Certifications (Attachment Seven).

Cost Summary. This ITB includes a Cost Summary Form (Attachment Eight). Bidders may not reformat this form. Each Bidder must complete the Cost Summary Form in the exact format provided, since the State may reject any Bid with a reformatted Cost Summary Form.

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

The Bidder's total cost for the Hardware & Services must be represented as the total price.

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

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

ATTACHMENT THREE: SPECIAL TERMS AND CONDITIONS

Terms in this attachment are specific to this ITB and will supersede Attachment Four: Standard Terms and Conditions.

Delivery/Freight Charges. Unless otherwise provided, the State will not be responsible for freight or delivery charges. Prices are to be based upon the product(s) being offered F.O.B. destination, free inside delivery to the location designated by the Agency at mutually agreeable times with inside delivery to areas of the Agency(s) choosing, freight prepaid by the Contractor to the location in the ITB or as listed on the purchase order issued under any Contract awarded. Any shipment marked C.O.D. will be rejected and returned at the Contractor's expense. Costs must include all packing, transportation and insurance charges. No payment will be made for any deliverable until the State has accepted the Deliverable. The State will have fifteen days after delivery to accept or reject a Deliverable.

Reimbursable Expenses. None.

Bill to Address.

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

Mail:

Ohio Department of Commerce
Attention: Accounts Payable
6606 Tussing Rd
Reynoldsburg, OH 43068

-Or-

E-mail:

accounting@com.state.oh.us

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

Location of Data. The Contractor must perform all work on the Project and keep all State data within the United States, and the State may reject any Proposal that proposes to do any work or make State data available outside the United States. The State also may reject any Proposal for which the Contractor has not submitted the Affirmation and Disclosure form representing that it will ensure that all work on the Project will be done within the United States and that all State data will remain in the United States. Additionally, the Contractor must provide written notification for approval if at any time the location of work or data changes.

Insurance.

Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.

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

for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

Limitation of Liability. Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the value of this Contract, provided such limitation does not impose an unlawful indemnification obligation upon the State. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the State against claims made against it, disclosure/breach of State data including personally identifiable information or State sensitive information, or for damages to the State caused by the Contractor's negligence or other tortious conduct.

ATTACHMENT FOUR: STANDARD TERMS AND CONDITIONS

- 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.
 - G. Time and Materials Contract: A Contract in which Contractor is paid (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.
 - 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, 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 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 Ohio Department of Administrative Services, Equal Opportunity Division.

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 the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

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

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 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 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/2018-10-PED-ACKN-Independent-Contractor-Worker-Acknowledgment-Form-fillable.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 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.

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. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, 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 sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

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.

III. CONTRACT CONSTRUCTION

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.

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 parties to the Contract. However, the State may document non-material changes in writing and provide notice to the Contractor. 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;
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. In addition, all subcontractors agree to be bound by all of the Terms and Conditions and specifications of the Contract. 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.

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 applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate Ordering Agency.
4. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.

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, facsimile, 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.

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

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 resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure of State Data including personally identifiable information and State sensitive information arising out of the performance of this Contract, provided that such bodily injury, property damage, or disclosure 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.

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 Office of 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.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal 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.
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.

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

1. Additional Insured Status

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

2. Primary Coverage

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

3. Umbrella or Excess Insurance Policies

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

4. Notice of Cancellation

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

5. Waiver of Subrogation

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

6. Deductibles and Self-Insured Retentions

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

7. Claims Made Policies

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

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

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

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

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

D. LIMITATION OF LIABILITY. Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this Contract, 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. The Contractor further agrees that the Contractor shall be liable for all direct damages due to the fault or negligence of the Contractor.

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 in a manner consistent with Generally Accepted Accounting Principles (GAAP) or equivalent 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 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 \$2,500, 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 to recover damages as well as the cost of the audit.

B. F.O.B. DESTINATION/ACCEPTANCE. The Contractor must provide Deliverables under this Contract F.O.B. Destination. 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.

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. At any time 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 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 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 State may withhold payment or set off the amount of any Ohio tax liability, liquidated damages or other damages or claims for damages, or other obligation of the Contractor or its subsidiaries to the State, including any amounts the Contractor owes to the State under this Contract against any payments due from the State to the Contractor under this Contract with the State.

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, termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or limit the State's rights in such.

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

1. Contract 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. 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. Termination for cause includes but is not limited to:

1) 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.

2) Termination for Endangered Performance. An Agency may terminate if it determines that the performance is endangered through no fault of its own.

3) 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 evidence of the Contractor's financial instability.

4) 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.

5) 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.

6) 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. ePROCUREMENT. This Contract will become part of an eProcurement System which will provide electronic contract and catalog hosting and management services. Ordering Agencies will access a web-based site to place orders for the procurement of goods and services using State of Ohio contracts. The Contractor agrees to establish, maintain and support an online contract and catalog.

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 contractors or potential contractors with the State, or individuals or organizations about whom the State 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 contractors, potential contractors with the State, 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:
 - a. Notifies the disclosing party 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.

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 originals of any Confidential Information provided by the disclosing party and destroy any copies the receiving party has made upon termination or expiration of this Contract.

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 is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public 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 acknowledgment or have a background check performed.

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 quarterly, bi-annual or annual usage reports as requested by all Contracting Agencies and Cooperative Purchasing Members. 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.

ATTACHMENT FIVE: SAMPLE CONTRACT

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

(CONTRACTOR)

THIS CONTRACT, which results from ITB ACQ1044 entitled **Replacement Handheld Scanners**, is between the State of Ohio, through the Department of Administrative Services, and _____ (the "Contractor").

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

This Contract consists of:

1. This one-page Contract in its final form;
2. The attached, amended and clarified version of Contractor's Bid in response to ITB ACQ1044 dated _____ ("Contractor's Response"). Contractor's Response includes Attachment Three - General Terms and Conditions, and all other Attachments, Supplements and materials included in Contractor's Response as accepted by the State; and
3. The attached Cost Proposal Workbook dated _____.

Change Orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

The term of the Contract will from the award date until the Work is completed to the satisfaction of the State and the Contractor is paid or June 30, 2023, whichever is sooner. The State may renew this Contract for up to two (2) additional two-year terms, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum duration through all renewals will be from award date until June 30, 2027. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.

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

CONTRACTOR

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES

SAMPLE – DO NOT FILL OUT

By: _____

By: Matthew Whatley

Title: _____

Title: DAS Interim Director

Date: _____

Date: _____

ATTACHMENT SIX: BIDDER CERTIFICATION FORM

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

1. The Bidder's proposed Hardware and services meet all the requirements of this ITB.
2. The Bidder has not taken any exception to the terms and conditions in this ITB.
3. The Bidder will comply with all federal and Ohio laws, rules, and regulations that are in force currently or anytime during the term of the Contract.
4. The Bidder is not now subject to an "unresolved" finding for recovery under Revised Code Section 9.24, and the Bidder will notify the Procurement Representative any time it becomes subject to such a finding before the award of a Contract arising out of this ITB.
5. The Bidder will be the prime Contractor if a Contract is awarded based on this Bid.
6. The Bidder will not and will not allow others to perform work for the State of Ohio outside the geographic limitations contained in Attachment One or take data that belongs to the State of Ohio outside the geographic limitations contained in Attachment One without express written authorization from the State.
7. The Bidder affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.
8. This Bid is genuine and not a sham and Bidder has not colluded, conspired, or agreed, directly or indirectly, with anyone or any entity to limit competition under this ITB or to set or otherwise control the prices, products, or services offered to the State under this ITB.
9. The Bidder certifies it and its subcontractors will perform all services only at the following location(s) within the United States:

Address 1:	Address 2:

Address 3:	Address 4:

(Attach an additional sheet if more addresses need to be listed.)

10. The Bidder certifies its and each of its subcontractors' principal places of business are located at the addresses identified in the Supplier Information Form(s) included with this Bid.

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

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

If the answer to any item above is affirmative, the Bidder must provide complete details about the matter, in an attached page. While an affirmative answer to any of these items will not automatically disqualify a Bidder from consideration, at the sole discretion of the State, such an answer and a review of the background details may result in a rejection of the Bid. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Bidder's performance under the Contract, and the best interests of the State.

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

Potential Conflicts (by person or entity affected)

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

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

13. The Bidder's personnel working on the Contract will have a valid I-9 form on file with the Bidder and will have presented valid employment authorization documents, if they are not United States citizens.

14. The Person signing below is an authorized representative of the Bidder and certifies to the truth and accuracy of the representations made above.

Signature

Name

Title

Company Name of Bidder

Company D-U-N-S Number

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

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

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

ATTACHMENT EIGHT: COST SUMMARY

Bidders responding to the ITB must submit a complete Cost Summary.

Any corrections or changes made to the figures in the UNIT or COST columns of the Table must be initialed or the bid will be disqualified.

Part Number	Description	Single Unit Cost		Quantity		Total Cost
CK65-L0N-BSC210F	Honeywell CK65 scanners, standard range, with spare battery Operating system required: Android	\$	X	641	=	\$
SVCCCK65-SP3N N CK65	Edge Service, Platinum, 2 Day, 3 year	\$	X	641	=	\$
Service	Description	FY22-FY23		Quantity		Total Cost
2-year Service Agreement	Software installation/ configuration/device setup and on-going management for RF-SMART AX Retail User Licenses. See Additional Services requirements in Attachment One – Service Requirements.	\$	X	641	=	\$
Grand Total for All Line Items					=	
Optional Contract Renewal Periods						
Service	Description	FY25		Estimated Quantity		Total Cost
SVCCCK65-SP3N N CK65	Edge Service, Platinum, 2 Day, 3 year	\$	X	641	=	\$
Service	Description	FY24-FY25		Estimated Quantity		Total Cost
2-year Service Agreement	Software installation/ configuration/device setup and on-going management for RF-SMART AX Retail User Licenses. See Additional Services requirements in Attachment One – Service Requirements.	\$	X	641	=	\$

Service	Description	FY26-FY27		Estimated Quantity		Total Cost
2-year Service Agreement	Software installation/ configuration/device setup and on-going management for RF-SMART AX Retail User Licenses. See Additional Services requirements in Attachment One – Service Requirements.	\$	X	641	=	\$

Pricing should assume:

1. Additional Services must begin upon delivery of the equipment through 6/30/2023, with the potential for two (2) additional two-year terms, in alignment with the state’s biennium, subject to and contingent on the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. The maximum duration through all renewals will be from award date until June 30, 2027. Any renewal of all or part of the Contract is subject to the satisfactory performance of the Contractor and the needs of the State.
2. Pricing per unit provided in the bid may be extended to approximately 100 additional units for the term of the contract and all subsequent renewals.

ATTACHMENT NINE: AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States unless a duly signed waiver from the State has been attained.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

- 1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

- 2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

- 3. Location where state data will be located, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be located by subcontractor(s):

(Name)

(Address, City, State, Zip)

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

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

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____