

2014 APR 22 PM 3: 50

**IN THE STATE OF OHIO
COURT OF CLAIMS**

OHIO DEPARTMENT OF
TRANSPORTATION, :
:
Plaintiff/Counterclaim-Defendant, :
:
v. :
:
E.J. WARD, INC., :
:
Defendant/Counterclaim-Plaintiff. :

ORIGINAL

Case No. **2014-00405 PR**

PETITION FOR REMOVAL

Pursuant to R.C. 2743.03(E) and Court of Claims Rule 4, Defendant/Counterclaim-Plaintiff E.J. Ward, Inc. ("E.J. Ward") hereby files this Petition for Removal, and states as follows:

JURISDICTION

1. On February 10, 2014, Plaintiff Ohio Department of Transportation ("ODOT") filed its Complaint against E.J. Ward in the Court of Common Pleas, Franklin County, captioned Ohio Department of Transportation v. EJ Ward, Inc., Case No. 14CV-02-1354, Judge D. Fais, presiding. On April 15, 2014, E.J. Ward filed a Counterclaim against ODOT seeking monetary damages. As such, E.J. Ward has timely filed this Petition for Removal under R.C. 2743.03(E) and Court of Claims Rule 4.

BASIS FOR REMOVAL

2. In its Counterclaim, E.J. Ward seeks damages from ODOT stemming from E.J. Ward's claims for Improper Termination, Breach of Contract, and Unjust Enrichment. Removal is proper pursuant to R.C. 2743.03(E) in that this Court has exclusive jurisdiction over the above-

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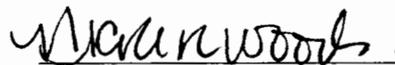
captioned action on the basis that, under R.C. 121.02(D), ODOT is a Department of the State of Ohio.

3. Removal is proper pursuant to Court of Claims Rule 4. Rule 4 provides that “a party who serves a counterclaim against the state * * * in a court other than the court of claims shall file a petition for removal in the court of claims.”

4. Copies of all process, pleadings, and other papers served upon the parties in the Common Pleas Court proceedings are attached. See Exhibit 1 for a list of submitted documents.

5. Pursuant to Rule 4(C), a copy of this Petition for Removal will be filed with the Court of Common Pleas of Franklin County, Ohio within seven days after the filing of this Petition for Removal with this Court. This Petition for Removal is filed and served upon all parties and the Attorney General of Ohio.

Respectfully submitted,



Hansel H. Rhee (0076093)

John P. Gilligan (0024542)

Nicole R. Woods (0084865)

Ice Miller LLP

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Columbus, OH 43215

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John.Gilligan@icemiller.com

Nicole.Woods@icemiller.com

Attorneys for Defendant E.J. Ward, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of April, 2014, a copy of the foregoing *Petition of Removal* was served via regular U.S. mail, postage prepaid, upon the following:

Jutta E. Martin
Marc. A. Sigal
Assistant Attorneys General
Transportation Section
150 E. Gay Street, 22nd Floor
Columbus, Ohio 43215

Office of Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215



Nicole R. Woods

EXHIBIT 1
LIST OF DOCUMENTS SUBMITTED WITH PETITION FOR REMOVAL

1. Summons (02/10/14)
2. Complaint (02/10/14)
3. Stipulation of Consent to Move, Respond, Answer, or Otherwise Plead (03/17/14)
4. Answer and Counterclaim of EJ Ward (04/15/14)

MARYELLEN O'SHAUGHNESSY
CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215
CIVIL DIVISION

OHIO STATE DEPARTMENT TRANSPORTATION
DIRECTOR JERRY WRAY
1980 WEST BROAD STREET
COLUMBUS, OH 43223-0000,

PLAINTIFF,
VS.

EJ WARD INC A NEVADA CORP
C/O NV REGISTERED AGENTS
REGISTERED AGENT
4600 KIETZKE LN STE N254
RENO, NV 89502-5000,
DEFENDANT.

14CV-02-1354

CASE NUMBER

2014 FEB 12 PM 9:57
CLERK OF COURTS
Franklin County, Ohio

**** SUMMONS ****

02/10/14

TO THE FOLLOWING NAMED DEFENDANT:

EJ WARD INC A NEVADA CORP
C/O NV REGISTERED AGENTS
REGISTERED AGENT
4600 KIETZKE LN STE N254
RENO, NV 89502-5000

YOU HAVE BEEN NAMED DEFENDANT IN A COMPLAINT FILED IN FRANKLIN COUNTY
COURT OF COMMON PLEAS, FRANKLIN COUNTY HALL OF JUSTICE, COLUMBUS, OHIO,
BY: OHIO STATE DEPARTMENT TRANSPORTATION
DIRECTOR JERRY WRAY
1980 WEST BROAD STREET
COLUMBUS, OH 43223-0000,

PLAINTIFF(S).

A COPY OF THE COMPLAINT IS ATTACHED HERETO. THE NAME AND ADDRESS OF
THE PLAINTIFF'S ATTORNEY IS:

MARC A. SIGAL
ASST ATTORNEY GENERAL
150 EAST GAY STREET
17TH FLOOR
COLUMBUS, OH 43215-6001

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE UPON THE PLAINTIFF'S
ATTORNEY, OR UPON THE PLAINTIFF, IF HE HAS NO ATTORNEY OF RECORD, A COPY
OF AN ANSWER TO THE COMPLAINT WITHIN TWENTY-EIGHT DAYS AFTER THE SERVICE
OF THIS SUMMONS ON YOU, EXCLUSIVE OF THE DAY OF SERVICE. YOUR ANSWER
MUST BE FILED WITH THE COURT WITHIN THREE DAYS AFTER THE SERVICE OF A
COPY OF THE ANSWER ON THE PLAINTIFF'S ATTORNEY.

IF YOU FAIL TO APPEAR AND DEFEND, JUDGMENT BY DEFAULT WILL BE RENDERED
AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

MARYELLEN O'SHAUGHNESSY
CLERK OF THE COMMON PLEAS
FRANKLIN COUNTY, OHIO

BY: JOYCE A. BEAUMAN, DEPUTY CLERK

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

JERRY WRAY, DIRECTOR,
OF THE OHIO DEPARTMENT OF
TRANSPORTATION
1980 West Broad Street
Columbus, Ohio 43223

and

STATE OF OHIO, DEPARTMENT OF
TRANSPORTATION
1980 West Broad Street
Columbus, Ohio 43223

PLAINTIFFS,

v.

E.J. WARD, INC., A NEVADA
CORPORATION
C/O NEVADA REGISTERED AGENTS,
REGISTERED AGENT
4600 Kietzke Ln., Ste. N254
Reno, NV 89502-5000

DEFENDANT.

CASE NO. _____

JUDGE _____

COMPLAINT

JURY DEMAND ENDORSED HEREON

Plaintiff Jerry Wray (the DIRECTOR), in his capacity as Director of the Ohio Department of Transportation and the State of Ohio, Department of Transportation(ODOT), for its Complaint against E.J. Ward, Inc. (Defendant), hereby alleges as follows:

BACKGROUND

1. This Complaint is brought by the DIRECTOR and ODOT to recover progress payments pursuant to a contract, and damages and costs incurred, against Defendant. This was caused by the Defendant breaching his contractual obligations as part of ODOT contract number RFP No. 509-12 (the CONTRACT), to implement an Automated Fuel Management System (FUEL MANAGEMENT SYSTEM) which uses current technologies including web based software and network capable hardware. See Exhibit B. The CONTRACT by its terms incorporated the Request for Proposals to Bid (the RFP). See Exhibit A.

2. Defendant did not fulfill his contractual obligations to install a FUEL MANAGEMENT SYSTEM and furnish the hardware and/or software in the performance of the CONTRACT that conformed to the specifications and conditions prescribed by the DIRECTOR.

3. The DIRECTOR and ODOT relied on Defendant's representations as to the adequacy of the hardware and/or software and system design for the FUEL MANAGEMENT SYSTEM and, as a result ODOT paid Defendant \$ 2,130,243.84 of the \$6,048,809.00 contract price for the installation, including hardware and software.

4. The DIRECTOR on behalf of ODOT is entitled to recover the installment payments and to recover damages and costs incurred as a result of the breaches and failures of Defendant.

THE PARTIES

5. Plaintiff, the DIRECTOR, pursuant to Ohio Revised Code Section 121.02(D) is the duly appointed Director of the Ohio Department of Transportation, a department of the State

of Ohio. ODOT operates pursuant to relevant portions of Title 55 of the Ohio Revised Code, among others, and has its principal office in Columbus, Ohio.

6. Defendant E.J. Ward, Inc. is a Nevada Corporation and has its principal place of business in San Antonio, Texas. Its agent for the service of process is in care of Nevada Registered Agents, Registered Agent, 4600 Kietzke Ln., Ste. N254, Reno, NV 89502-500. E.J. Ward was engaged by ODOT to install, design and furnish hardware and software for the Fuel Management System.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Defendant under Ohio Revised Code Sections 2305.01 and 2307.382(A)(1) and (2), in that the Defendant transacted business and contracted to supply goods and perform services in the State of Ohio.

11. The Contract provides that the parties and terms of the contract are governed by the laws of Ohio. See page 4 of Contract, Exhibit B.

12. Venue is proper in Franklin County under Civ. R. 3(B)(3) and (6) and Ohio Revised Code Section 5513.01(A) because Defendant conducted activity in Franklin County and that the breach that gave rise to the instant Complaint, and all or part of the claims for relief pled in this Complaint arose in Franklin County.

COUNT I. BREACH OF CONTRACT

13. The DIRECTOR and ODOT incorporate paragraphs 1 through 12 as though fully rewritten herein.

14. On or about June 25, 2012, the DIRECTOR issued a Request for Proposal (RFP) #509-12 for the installation of a Fuel Management System, including hardware and software.

Exhibit A. The intent was to purchase a system to track fuel usage and assist in tracking the lifecycle and performance of ODOT's motor fleet; the system was to include the monitoring and management of fuel consumption, inventory tracking and audit/compliance monitoring.

15. In response to the RFP, Defendant E.J. Ward, Inc. submitted a bid on or about July 20, 2012, to implement a state wide fuel management system for ODOT and to provide the technology needed to complete the project. The original bid submitted by Defendant Ward was for approximately \$8,889,043.00. On August 10, 2012, E.J. Ward submitted a Best and Final offer to ODOT for RFP #509-12 in the amount of \$6,281,775.00 for the fuel management system, pursuant to the revised offer, and \$ 1,281,385.00 for a 1 year data plan. The final contract price was contingent on the results of the gap analysis, number of ODOT fueling sites and number of cars in ODOT's fleet. See Exhibit C.

16. E.J. Ward and ODOT entered into a written agreement on August 27, 2012, wherein Defendant agreed to design, install and deliver hardware and software for an Automated Fuel Management System at over one hundred fifty (150) ODOT fuel locations throughout Ohio. A copy of said contract is attached as Exhibit A.

17. In September 2012, the contract price for the statewide fuel management system was determined to be \$ 6,048,809.00. See Exhibit D. In March 2013, the CONTRACT was amended as to the billing terms. See Exhibit E.

18. The installation of the system started sometime in the fall of 2012 and at a later date extensive issues in activating the sites to communicate with the ODOT wireless network became evident.

19. The problems with the installation issues and/or equipment continued and came to

a head when a Ford F150s lost power while being operated by two ODOT employees. The two employees went left of center and were almost in an accident due to the loss of power by the truck.

20. As a result, ODOT terminated the contract for non-compliance with the contract terms on April 10, 2013 and rejected and/or revoked acceptance of the E.J. Ward equipment that has been installed at several ODOT locations around the state. See Exhibit F. The contract was terminated pursuant to contract provision Exhibit A, page 10, paragraph 28.

21. Defendant breached the CONTRACT by failing to properly design, install a Fuel System, including the sale of hardware and software that conformed to the intent, specifications and conditions prescribed by the DIRECTOR in the CONTRACT and RFP #509-12, and protect ODOT and Director from defective materials and installations.

22. The DIRECTOR and ODOT performed their obligations under the CONTRACT.

23. As a direct and proximate result of Defendant's breach of contract, the DIRECTOR and ODOT are entitled to recover the payments made to Defendant E.J. Ward in the amount of \$2,130,243.84 as well as incidental and consequential damages. In addition, Plaintiffs will incur additional costs to remove the non-compliant installation and materials in excess of \$25,000.

COUNT II. BREACH OF EXPRESS WARRANTY

24. The DIRECTOR and ODOT incorporate by reference the allegations contained in paragraphs 1 through 23 above as though fully rewritten herein.

25. As part of the express provisions of the CONTRACT, Defendant agreed to correct system defects of the hardware and software for system malfunctions or functional deviations

from the ODOT approved design. The RFP, Exhibit A, page 17 #9 expressly states:

Warranty – The contractor shall provide warranty coverage for both hardware and software system components for 1 year from the Statewide Implementation date. The Contractor must correct system defects (hardware & software), which are system malfunctions or functional deviations from ODOT approved system design. No requirements or design changes are involved in the correction of application defects. The Contractor must take corrective action and ensure that the system performs as designed. During the warranty period the contractor will provide toll-free telephone support for hardware and software 24/7 (24 hours a day/7 days a week). Warranty shall include system upgrades.

In response, the E.J. Ward proposal stated, that “its hardware and software will be free from defects in material and workmanship for a two (2) year period following delivery.” The system installed by Defendants did not perform as designed and the defects were not corrected as warranted.

26. The CONTRACT contained a description of the goods which was made part of the basis of the bargain.

27. ODOT discovered defects to the system during the project installation and within the warranty period.

28. E.J. Ward was aware of the defects and refused to correct the defects in compliance with the contract and made representations that the hardware and software of the automated fuel management system as installed would work properly.

29. Despite repeated notices of defects that do not meet CONTRACT requirements, Defendant has refused to refund the monies paid and reclaim the hardware and software.

30. As a result of Defendant’s breach of the expressed warranty, the DIRECTOR on behalf of ODOT is entitled to cancel the CONTRACT and recover the \$ 2,130,243.84 paid to E.J. Ward for the Automated Fuel Management System.

COUNT III. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

31. The DIRECTOR and ODOT re-allege and incorporate by reference the allegations contained in paragraphs 1 through 30 above.

32. As a manufacturer and/or seller of the hardware and software for the automated fuel management system, Defendant E.J. Ward is a merchant of such goods.

33. The hardware and software failed to pass without objection in the trade under the contract description.

34. The hardware and software for the automated fuel management system was not fit for its ordinary purpose.

35. Defendant failed to provide an automated fuel management system that was merchantable and as a result Defendant breached an implied warranty of merchantability.

36. As a result of Defendant's breach of the implied warranty of merchantability, the DIRECTOR on behalf of ODOT is entitled to cancel the CONTRACT and RECOVER the \$2,130,243.84 paid, its expenses incurred as well as incidental and consequential damages in excess of \$25,000.

COUNT IV. BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

37. The DIRECTOR and ODOT re-allege and incorporate by reference the allegations contained in paragraphs 1 through 36 above.

38. Defendant E.J. Ward at the time of bidding and contracting had reason to know the particular purpose for which the automated fuel management system was required.

39. The DIRECTOR and ODOT relied on Defendant's skill and judgment to select or

furnish hardware and software suitable for the installation of the automated fuel management system and Defendant knew of this reliance.

40. Defendant failed to provide hardware and software that was fit for its particular purpose and as a result Defendant breached an implied warranty that the automated fuel management system shall be fit for the particular purpose.

41. As a result of Defendant's breach of the implied warranty that the automated fuel management system shall be fit for a particular purpose, the DIRECTOR on behalf of ODOT is entitled to cancel the CONTRACT and recover the \$2,130,243.84 paid for the fuel management system, its expenses incurred as well as incidental and consequential damages in excess of \$25,000.

COUNT V. UNJUST ENRICHMENT

42. The DIRECTOR and ODOT re-allege and incorporate by reference the allegations contained in paragraphs 1 through 41 above.

43. Defendant has been unjustly enriched to the detriment of the DIRECTOR and ODOT by accepting a benefit in the form of payments for an Automated Fuel Management System that did not work properly and performed in a deficient manner.

44. The Defendant had knowledge of the benefit it received.

45. The retention of the benefit under these circumstances would be unjust.

46. As a direct and proximate result of the unjust enrichment by Defendant, the DIRECTOR on behalf of ODOT is entitled to recover the \$ 2,130,243.84 paid to E.J. Ward.

PRAYER FOR RELIEF

WHEREFORE, the DIRECTOR requests that this Court enter judgment in his favor on behalf of ODOT and against Defendant as follows:

1. Enter judgment for the DIRECTOR and ODOT on each count of the Complaint;
2. Award the DIRECTOR on behalf of ODOT restitution of the \$ 2,130,243.84 paid for the Automated Fuel Management System and/or its fair and reasonable damages in excess of \$25,000;
3. Award the DIRECTOR on behalf of ODOT prejudgment and post-judgment interest;
4. Award the DIRECTOR on behalf of ODOT its attorney's fees and costs;
5. Award the DIRECTOR on behalf of ODOT such further relief as may be just and proper.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

/s/ Jutta E. Martin
JUTTA E. MARTIN (0037920)
MARC A. SIGAL (0014719)
Assistant Attorneys General
Transportation Section
150 E. Gay Street, 22nd Floor
Columbus, Ohio 43215
Telephone: (614) 466-4656
Facsimile: (614) 466-1756
jutta.martin@ohioattorneygeneral.gov
COUNSEL FOR PLAINTIFFS

JURY DEMAND

Now come Plaintiffs, by and through their attorneys, and requests a trial by jury on all issues so triable.

/s/ Jutta E. Martin
JUTTA E. MARTIN (0037920)
Assistant Attorney General

RFP No. 509-12

CONTRACT

This Contract is made by and between the State of Ohio, Department of Transportation, acting through its Director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and EJ Ward Inc., 8801 Tradeway, San Antonio, Texas 78217 (hereinafter referred to as the "VENDOR"); collectively the "PARTIES".

Whereas the PARTIES agree to the amendments referenced in the attached documents to RFP #509-12; and

WHEREAS the PARTIES seek to memorialize the terms and conditions in the attached documents and reference the so as to be fully incorporated in RFP #509-12; and

WHEREAS the PARTIES agree that the other terms and conditions found under RFP #509-12 control except where specifically acknowledged by both PARTIES.

NOW THEREFORE, in consideration of the performance of mutual covenants hereinafter set forth, it is agreed by PARTIES hereto that the terms and condition set forth in the attached document shall be adopted into RFP #509-12, and that RFP#509-12 shall be dully and fully executed upon the last date of the signatures to this Contract.

Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be duly executed in duplicate.

STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

Jerry Ward/moc
Director

8/27/12
Date

VENDOR

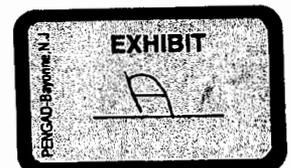
By: Mark
Officer

Title: VP

Date: 8-15-2012

Reviewed as to Form
Office of Chief Legal Counsel
Ohio Department of Transportation

8/24/12



2012 STANDARD CONTRACT PROVISIONS

STANDARD TERMS AND CONDITIONS

1. **HEADINGS:** The headings used in this CONTRACT are for convenience only and shall not affect the interpretation of any of the terms and conditions thereof. When terms and conditions set forth elsewhere in the CONTRACT conflict with these terms and conditions, the CONTRACT standard terms and conditions shall prevail.
2. **DEFINITIONS:**
 - A. As used in this document, the term Vendor, Offeror, Contractor, and successful Proposer shall have their common meaning and may be used interchangeably.
 - B. As used in this document, the term Contract, Agreement, Bid, Quote, Invitation to Bid or Proposal shall have their common meaning and may be used interchangeably.
3. **GOVERNING LAW/SEVERABILITY:** The CONTRACT award and the agreement entered into with the successful vendor (hereinafter referred to as "the Contract") are governed by the laws of the State of Ohio. If any provision of this Contract, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Contract, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. **INFORMATION REQUESTED:** Vendors shall furnish all information as requested in the Contract documents. At the discretion of the Director, additional information, necessary for evaluation of the Proposal may be attached to the CONTRACT and shall be properly identified as being part of the CONTRACT. ODOT reserves the right to request literature, or other documentation for clarification, although such may not have been set forth in the CONTRACT. ODOT also reserves the right to require a Vendor to have a complete W-9 on file with the Department prior to a contract being awarded. Failure to provide the required information or a complete W-9 may render the quote invalid.
5. **SAMPLES REQUESTED:** When requested, samples shall be furnished at vendors' expense and unless otherwise specified, prior to opening of the Bids. Samples shall be clearly identified by vendor's name, the CONTRACT number, corresponding items in the CONTRACT and the opening date. ODOT acknowledges that it may receive quotes from multiple distributors quoting the same manufacturer's products. In such situations, samples may be submitted by manufacturers on behalf of multiple distributors, provided that such samples shall be accompanied by written documentation, on manufacturer's letterhead, signed by an authorized representative of manufacturer, listing the named distributors for whom the samples are provided. Any vendor not appearing on this listing and who has failed to furnish requested samples shall be considered non-responsive. Unless otherwise stated, any sample submitted with the Bid shall not be deemed to vary from any of the provisions, specifications, or terms and conditions of the CONTRACT. When requested in writing, samples not destroyed in testing, shall be returned at the vendor's expense. Samples not so requested shall become the property of ODOT. Unsolicited samples which are submitted, shall be at the vendor's risk and, shall not be examined or tested, and shall not be considered in the evaluation process. ODOT reserves the right to request samples although such may not have been set forth in the CONTRACT.
6. **SPECIFICATIONS:** ODOT is authorized to prepare specifications to obtain supplies and services. The purpose of the specification is to describe the supplies or services to be purchased and will serve as a basis for comparison of Bids. The Department may use any form of specification it determines to be in the best interest of the State and that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification or a combination thereof. If the department determines that a design, performance, or a combination specification is not in the best interest of the State, it may use brand name or equal specifications. Where a brand name or equal specification is used, use of brand name is for the purpose of describing the base standard of quality, performance and characteristics desired only, and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award.
7. **UNIT PRICE GOVERNS:** The unit price governs the award unless otherwise specified in the Bid documents. The unit price must be entered for each item being quoted. Use of ditto marks, arrows, or other markings in lieu of the actual unit price shall be deemed non-responsive. Lot prices listed in the unit price area shall be considered as the unit price unless clearly identified as the lot price. Any request to change or

2012 STANDARD CONTRACT PROVISIONS

alter the price after opening of the Bids shall not be allowed. Vendors should review its pricing carefully, as once a contract is awarded; the Contractor shall be required to deliver the goods or services at the prices quoted. Vendors shall not insert a unit cost of more than three (3) digits to the right of the decimal point. Digit(s) beyond three (3) will be dropped and not used in the evaluation of the quote or payment thereof.

8. **QUOTES FIRM:** Once opened, all Bid prices are firm and cannot be altered. Once a contract is awarded, the Vendor shall deliver at the prices and terms submitted in their proposal. The Ohio Department of Transportation shall receive the benefit of any decrease in price during the guaranteed price period. Unless otherwise stated, all Bid prices shall remain valid for a period of ten (10) calendar days after the opening date found in the Proposal or Invitation.
9. **MODIFICATION OF CONTRACTS:** A Vendor may request to modify their bid or quote response up to three (3) calendar days prior to the scheduled date and time set for opening. If changes or alterations are made to the CONTRACT response, the original information must be lined or opaqued out with the new information inserted. All changes, corrections, or alterations must be legible and initialed by the Vendor. Illegible modifications shall result in disqualification of the items. Failure of the Vendor to initial any such modifications may result in disqualification of the items, which have been modified. ODOT reserves the right, but in no way is required, to request written certification from the Vendor verifying that such changes were made by the Vendor and are applicable to the Bid documents and any resulting contract. All documents relating to the modification shall be made a part of the CONTRACT file.
10. **WITHDRAWAL OF CONTRACTS:** Up to three (3) calendar days prior to the scheduled time and date for opening, a Vendor may, by written notice to the Director of ODOT, request to withdraw their CONTRACT response. Such written notice must set forth reasons for the withdrawal. **After opening**, a Vendor may request to withdraw their CONTRACT response from consideration if the price quoted is substantially lower than the other quotes, providing the CONTRACT was submitted in good faith, and the reason for the quoted price being substantially lower was due to an unintentional and substantial arithmetical error, or unintentional omission of a substantial quantity of material or labor in the compilation of the CONTRACT. Written notice of any such request to withdraw must be sent by fax, email, or certified mail, and received within forty-eight hours after the opening date. All requests to withdraw a CONTRACT must be placed in writing to the Director of ODOT and no CONTRACT may be withdrawn without written approval from the Director of ODOT. The decision to allow a CONTRACT to be withdrawn is at the sole discretion of the Director of ODOT. If the CONTRACT is to be awarded by category, the withdrawal request will apply to all items within the category. All documents relating to any withdrawal request will become a part of the permanent CONTRACT file. Pursuant to Ohio Revised Code Section 5525.01, the Director may declare forfeited any bid bond associated with a CONTRACT if the terms of this paragraph are not met, and may take any other remedy available under the law including specific performance.
11. **TAXATION:** ODOT is exempt from federal excise taxes and all state and local taxes, unless otherwise provided herein. ODOT does not agree to pay any taxes on commodities, goods, or services acquired from any Vendor.
12. **REJECTION OF ANY/ALL CONTRACTS:** The Director of ODOT reserves the right to accept, or reject, any or all Contracts, Bids, Proposals, etc. in whole or in part, for reasons of material breach or any other reason as determined by the Director. The Director may determine that any irregularities or deviations from the specifications do not result in the CONTRACT being non-responsive or the contractor in breach, provided however, that the Director of ODOT determines that this does not affect the amount of the CONTRACT or result in a competitive advantage to the Vendor.
13. **DISQUALIFICATION OF VENDORS:** Any of the following reasons may be considered as being sufficient for the disqualifications of a Vendor and the rejection of their proposal:
 - A. More than one proposal for the same work from an individual, firm, or corporation under the same or different name.
 - B. Evidence of collusion among Vendors.
 - C. Quotes or Bids which are in ODOT's opinion unbalanced.
 - D. Evidence that the Vendor has sublet or sub-vended any portion of the work, labor or materials without prior written approval from the Department.

2012 STANDARD CONTRACT PROVISIONS

E. Any other reason considered a material breach of the bid terms as determined by the Director.

The CONTRACT supplied by a disqualified Vendor shall be rejected, and the disqualification determination will be used to evaluate the responsibility of the Vendor in future CONTRACTS.

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

14. **CREATION OF THE CONTRACT:** A contract is created between the Vendor and the Ohio Department of Transportation when the Director of Transportation accepts the proposal, bid or quote and acknowledges the acceptance in writing. The contract shall become operational only when either a purchase order has been issued or the Department's payment card is presented to the awarded Vendor. The contract shall contain all the terms and conditions of this CONTRACT as well as the accepted responses in the Invitation or Proposal, except that no responses may change or alter the terms and conditions of this CONTRACT.

The contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.

15. **NON-ASSIGNMENT OF INTEREST:** The Vendor shall not assign any interest, duty, or right under the contract, in whole or in part, unless expressly noted in the proposal or with prior written approval from the Director of ODOT.
16. **PURCHASE ORDER/PAYMENT CARD REQUIRED:** The Department is not obligated to purchase any goods or services provided by the Vendor as a result of the award of the contract to the Vendor. The approved purchase order shall authorize the Vendor to provide goods or services listed on the order and will obligate the Department to pay for such goods or services upon completion of delivery or performance of service by the Vendor. Any order placed, not using an approved Department purchase order or payment card, shall not be considered a valid order and may result in denial of payment and/or return of goods at the Vendor's expense.

Note: Payments for purchases at the contract price may be made with a State of Ohio Payment Card. Such payments will be made within three (3) days of the actual sale date. If the Vendor is able to accept the State of Ohio payment card, they must meet the policies and procedures of the Department's Office of Accounting. Payment cards cannot be used for service contracts when the Vendor is not on the approved list of incorporated vendors. In addition, unit prices quoted shall include all costs associated with the use of the State's payment card if the Vendor has notified ODOT that it company is able to accept a credit card.

17. **DELIVERY/FREIGHT CHARGES:** Unless otherwise stated, the Department shall not be responsible for freight or delivery charges. Prices are to be based upon the products or services being offered F.O.B. destination, freight prepaid by the Vendor to the locations set forth in the CONTRACT or as listed on the purchase order issued pursuant to any contract awarded. Any shipment marked C.O.D. may be rejected and returned at the Vendor's expense.
18. **DELIVERY/INSPECTION, ACCEPTANCE, & AMENDMENTS:** Upon delivery of the product/service, the Department retains the right to inspect the product/service prior to final acceptance and/or payment for the product/service. The purpose of the inspection process is to ensure that the product/service is in compliance with the specifications set forth in the awarded contract. In the event that the product/service does not meet the specifications, the Department shall notify the Vendor for removal/replacement of the product or service. The Department shall retain all rights and remedies as described herein. Wherein products ordered by the Department are delivered to a facility, which is not owned by the Department and where the Department has contracted with this facility to take delivery of products ordered, acceptance will occur when the products have been inspected and accepted by the Department within a reasonable amount of time after delivery to the facility. The Department shall not be responsible for any storage costs incurred prior to the inspection and acceptance.

No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.

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19. **DELIVERY/TITLE TO THE MERCHANDISE:** Title to the product(s) passes to the Department upon inspection and acceptance. The Department shall approve and process payment for the product(s) upon passing of the title.
20. **CONTRACT REMEDIES:**
- A. **ACTUAL DAMAGES:** Vendor is liable to the State of Ohio for all actual and direct damages caused by Vendor's default. The State may substitute supplies or services, from a third party, for those that were to be provided by Vendor. In accordance with Ohio Revised Code §5513.05(c), the State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Vendor's default, from Vendor.
- B. **LIQUIDATED DAMAGES:** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable, or milestone that is the subject of the default for every day that the default is not cured by the Vendor. If Delay of the cure is caused by the Department, the delivery date shall be extended accordingly to offset such delays. Approval to extend any scheduled delivery date shall be at the sole discretion of the Department.
- C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE:** The State may deduct all or any part of the damages resulting from Vendor's default from any part of the price still due on the contract, upon prior written notice issued to the Vendor by the State.
21. **INVOICING & PAYMENT:**
- A. In consideration for Vendor's performance, the Department shall pay Vendor directly at the rate specified in the CONTRACT. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer (EFT). For all transactions, Vendor must have a valid W-9 form on file with the Department.
- By Purchase Order:** Upon delivery of goods or performance of the service, as described on any purchase order placed against the contract, Vendor shall submit proper invoices within 30 calendar days after the Department's receipt of goods or services, in quadruplicate, directly to the ordering agency billing office as indicated on the purchase order. A proper invoice is defined as being free from defects, discrepancies, errors or other improprieties and shall include, but may not be limited to:
- 1) Vendor's name and address as designated in the Bid or Quote.
 - 2) Invoice remittance address as designated in the Bid or Quote.
 - 3) The Purchase Order number authorizing the purchase of goods or services.
 - 4) Description, including time period, unit price, quantity, and total price of goods or services delivered or rendered as specified in the Bid or Quote.
 - 5) Assessments for load limit violations, non-compliance with specifications, late delivery, and other necessary deductions have been properly applied, etc.
- Defective invoices shall be returned to the Vendor noting areas for correction. If such notification of defect is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.
- By Payment Card:** The Department may use the Ohio Payment Card in accordance with the OBM guidelines. Vendor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Vendor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the Department.
- B. **Defective Invoices:** In the event the Department is in receipt of defective or improper invoices, the Department shall postpone payment pursuant to Section 126.30 of the Ohio Revised Code.

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Invoices shall be returned to the Vendor noting areas for correction. If such notification of defect is sent, the required payment date shall be thirty (30) calendar days after receipt of the corrected invoice.

- C. **Payment of Invoices:** Pursuant to Ohio R.C. Section 126.30, and the applicable rules thereto, all state agencies shall make prompt payment for any goods or services acquired from the Vendor. Upon receipt of a proper invoice, payment, subject to the foregoing provision and, unless otherwise stated, shall be made within thirty (30) calendar days. The Department will make payment to the same company name and Federal tax identification number awarded the contract and mail to the Vendor address indicated in the response to the invitation. No payments shall be made to parent or subsidiary companies. Any changes regarding payment after formation of the contract will not be permitted.
- D. **Electronic Commerce:** The State of Ohio is an active participant in Electronic Data Interchange (EDI). This program will benefit both the state and the Vendor by reducing time delays in receiving orders and payments that are associated with the existing manual processes. It is the goal of the State of Ohio to conduct all procurement activities through electronic commerce technologies. All Vendors are encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio in the future. The following EDI information is offered to assist all interested businesses in their efforts to move toward becoming a trading partner with the State of Ohio through the electronic commerce technologies.
- E. **Electronic Data Interchange:** EDI is another major piece of the state's electronic procurement model. EDI is presently used for electronic invoicing and payment of large dollar purchases. The program includes the receipt of electronic invoices from Vendors and the transmission of payment and remittance information back to the Vendor. A complete implementation guide for doing business with the State of Ohio using EDI, can be found on the Internet at: <http://www.state.oh.us/ecedi>. This guide contains all of the information necessary for a business to become EDI compliant. By following all of the links, the entire guide may be viewed, downloaded, and printed at your location. The state has implemented the purchasing transaction set and Vendors are encouraged to receive the electronic purchase order (850). The state will provide implementation guidelines for this activity, which will involve participation by the Vendor. Once you become an EDI trading partner, incorporating additional transaction types will require minimal effort. If you are currently unable to perform EDI and would like to have assistance in establishing capabilities to conduct business with the State of Ohio through this technology, please contact Greg Miller at (614) 466-3459 or Teria Stelzer at (614) 752-6694.

22. BREACH OF CONTRACT:

- A. After being awarded the CONTRACT, if the Vendor fails to perform its contract obligations or refuses to correct problems identified by department personnel or fails to perform with diligence and adequate effort as required to complete the contract in a timely manner, the Vendor will be declared to be in breach of contract. A Vendor complaint form will be filed by the district with the Office of Contracts, Purchasing Services.
- B. The Vendor shall be given a written notice of its breach of contract by the Department. This notice will clearly state the performance problems that need to be cured; if applicable. The notice will be sent certified or express mail or by electronic mail if that communication method has been used by the parties.
- C. Unless the breach creates a health or safety issue for which the contract will be terminated immediately, the Vendor shall be permitted an opportunity to commence a cure within **ten (10) calendar days** of receipt of the notice of breach or within a time frame agreed upon by the parties. The Vendor risk being found in default if it refused to commence a cure within a reasonable time.
- D. Pursuant to Section 5513.05 of the Ohio Revised Code the Department may recover from a Vendor who fails to promptly provide conforming articles any incidental or consequential damages as defined in Section 1302.89 of the Ohio Revised Code incurred by the Department in promptly obtaining the conforming articles.

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23. TERMINATION FOR CAUSE – DEFAULT:

- A. When the Vendor is declared to be in default, a written Notice of Default will be emailed or faxed and sent certified or express mail to the Vendor and the contract will be terminated.
- B. Once the Vendor has been defaulted and the contract is terminated, the Vendor shall cease all work or deliveries. Further, all pay estimates or invoices shall cease until the Department conducts a final accounting.
- C. The Department may take possession of all materials, supplies, and equipment at the project or those stored off site for which the department has paid the Vendor. The Department may complete the work by such means as it deems appropriate. The Department may also purchase, on the open market, any materials, or supplies that have not been delivered by the Vendor.
- D. If the Department incurs further expense in completing the work or purchasing materials or supplies on the open market, the excess costs shall be paid by the terminated Vendor.

24. FORCE MAJEURE: Except as otherwise provided herein, neither the Vendor nor the Department shall be liable to the other for any delay or failure of performance of any provisions contained herein, nor shall any such delay or failure or performance constitute default hereunder, to the extent that such delay or failure is caused by force majeure. The term force majeure, as used herein shall mean without limitation: acts of God such as epidemics; lightning; earthquakes; fire; storms; hurricanes; tomadoes; floods; washouts; droughts, or other severe weather disturbances; explosions; arrests; restraint of government and people; and other such events or any other cause which could not be reasonably foreseen in the exercise of ordinary care, and which is beyond the reasonable control of the party affected and said party is unable to prevent.

25. NON-DISCRIMINATION/COMPLIANCE WITH APPLICABLE LAWS: The Vendor, as a term of the contract, shall comply with Civil Rights Act of 1964, the Federal Rehabilitation Act of 1973, any and all applicable Federal Executive Orders, any and all applicable Ohio Governor Executive Orders, and any and all other statutes, rules and regulations pertaining to non-discrimination. The Vendor further agrees that he/she is in compliance with the requirements of Ohio Revised Code Section 125.111.

Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, sexual orientation, gender identity, genetic information or age. Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, sexual orientation, gender identity, genetic information or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, sexual orientation, gender identity, genetic information or age. Contractor shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

26. NON-APPROPRIATION OF FUNDS: It is understood that the Department's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. Subject to the applicable provisions of the Ohio Revised Code, the Department represents: that it has adequate funds to meet its obligations under any contract awarded as a result of this contract during the current fiscal year; that it intends to maintain any contract awarded as a result of this contract for the full period set forth herein; and that it has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during such period. However, Article II, Section 22, of the Constitution of the State of Ohio prohibits the current General Assembly from committing a future General Assembly to an expenditure. In addition, no state contract may extend beyond June 30 of the current biennium. Should the effective date of any state contract extend beyond June 30, of the current biennium, such contract shall be null and void unless the

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state affirmatively renews the contract through issuance of a valid ODOT Purchase Order or by actions of the Department of the decision to renew. A biennium will expire on June 30 of an odd numbered calendar year.

Furthermore, if the source of funding for the contract is supplied by an entity other than the Department, and if said funding is withdrawn prior to the acceptance by the Director, the Department's obligations under this Contract are terminated without further obligation of the Department.

27. **ANTITRUST:** The Department and the Vendor recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT. As consideration for the award of the contract, and intending to be legally bound, the Vendor assigns to the Department all right, title and interest, to all claims and causes of action the Vendor now has or may acquire under state or federal antitrust laws **provided** that the claims or causes of action relate to the goods or services that are the subject of the contract, and **except** as to any claims or causes of action which result from antitrust violations that occur after the price is established under the contract and that are not passed on to the Department. Additionally, Vendor warrants that any overcharges resulting from antitrust violations by Vendor's first tier suppliers and sub Vendors shall not be passed on to the Department.
28. **TERMINATION OR SUSPENSION:** Any contract awarded as a result of this CONTRACT may be terminated by either party after the expiration of sixty (60) days from the effective date of the contract by giving thirty (30) days prior written notice of intent to cancel to the other party. However, in the event that services/materials supplied by the Vendor do not comply with the terms/specifications in this invitation, the Department reserves the right to cancel this Contract immediately. Notwithstanding the above, the Department further reserves the right to cancel this Contract for the following reasons within the following respective time frames.
 - A. **TERMINATION FOR FINANCIAL INSTABILITY:** The Department may cancel this Contract immediately by written notice to the Vendor if a petition in bankruptcy or similar proceeding has been filed by or against the Vendor.
 - B. **CANCELLATION:** Any contract awarded in error may be rescinded at the Directors discretion. If cancellation is for the convenience of the Department, the Vendor will be entitled to compensation for any deliverable that the Vendor has delivered before the cancellation. Such compensation will be the Vendor's exclusive remedy and provided only after a proper invoice is submitted and approved by the Department.
 - C. **TERMINATION FOR DELINQUENCY, VIOLATION OF LAW:** The Department may terminate this Contract by written notice, if it determines that Vendor is delinquent in its payment of federal, state, or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs, or any other obligation owed to a state agency or political subdivision. The Department also may cancel this Contract, if it determines that Vendor has violated any law during the performance of this Contract. However, the Department may not terminate this contract if the Vendor has entered into a repayment agreement with which the Vendor is current.
 - D. **TERMINATION FOR SUBCONTRACTOR DEFAULT:** The Department may terminate this Contract for the default of the Vendor or any of its subcontractors. The Vendor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Department for any liability to them. Subcontractors will hold the Department harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Vendor for any compensation to which they may be entitled.
 - E. **TERMINATION FOR FAILURE TO RETAIN CERTIFICATION:** Pursuant to section 125.081 of the Revised Code, the Department may set aside a quote for supplies or services for participation only by minority enterprises (MBE's) as certified by the State of Ohio, Equal Opportunity Coordinator. After award of the contract, it is the responsibility of the MBE Vendor to maintain certification as a MBE. If the Vendor fails to renew its certification and/or is de-certified by the State of Ohio, Equal Opportunity Coordinator, the Department may immediately cancel the contract.

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- F. **SUSPENSION:** If Vendor fails to perform any one of its obligations under this Contract, it will be in default and the Department may suspend rather than terminate this Contract if the Department believes that doing so would better serve its interests.

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

The notice of suspension, whether with or without cause, will be effective immediately on the Vendor's receipt of the notice. The Vendor will immediately prepare a report and deliver it to the Department, which will include a detailed description of work completed, percentage of project completion, estimated time for delivery of all orders received to date, and costs incurred by the Vendor.

29. **INDEMNIFICATION:** The Vendor shall defend, indemnify and hold harmless the Department for any and all claims, damages, lawsuits, costs, judgments, expenses or any other liabilities which arise as a result of the services performed by the Vendor or its employees or agents which is in any way connected with, or based upon services rendered in performance of the contract.
30. **CONFIDENTIALITY:** The Vendor acknowledges that some of the information, documents, data, records, or other material provided by the Department during the performance of the contract may be of a confidential nature. The Vendor agrees that it will not disclose any information obtained by it as a result of the contract, without written permission from the Director of ODOT. Further, Vendor agrees to make all reasonable efforts to ensure that no such confidential information is disseminated by its employees. The restrictions herein shall survive termination of the contract. The Vendor shall assume that all aspects of information, documents, data, records, or other material are confidential unless otherwise indicated.
31. **CONFIDENTIAL DATA:** The Department reserves the right to request additional confidential information, including but not limited to financial information, to be used for evaluation purposes even though such information may not have been required by the CONTRACT. In the event such information is requested, the Department agrees to retain such information as confidential to the extent permitted by law.
32. **DRUG-FREE WORKPLACE:** By virtue of the signature on the last page of this CONTRACT, the Vendor certifies, to the best of his/her ability, that its employees will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs, in any way, while working on state property. Failure to comply will result in immediate termination of any contract awarded and the Vendor will be subject to the provisions as set forth in Paragraph 21.
33. **PATENTS:** Section 107.03 concerning patented devices, materials and processes, as stated in the Ohio Department of Transportation Construction and Materials Specifications current issue, is incorporated by reference, as if rewritten herein for this CONTRACT. A copy of Section 107.03 is available upon request.
34. **WORKERS' COMPENSATION:** Vendor shall be in compliance with all State and Federal laws pertaining to the type of service requested, such as Workers' Compensation. ODOT is hereby released from any and all liability for injury received by the Vendor, its employees, agents, or subcontractors, while performing tasks, duties, work, or responsibilities as set forth in this Contract.
35. **PROTEST PROCEDURE:**
- Pursuant to Ohio Revised Code Section 9.312, an apparent low Vendor found not to be responsive or responsible shall be notified of that finding and the reasons for it. The notification shall be given in writing and by certified mail.
 - Vendor shall have five (5) calendar days after receipt of notification to file a written protest. The Department shall meet with the apparent low Vendor or Vendors at their option upon the filing of a timely written protest.
 - No final award shall be made until the Department either affirms or reverses its earlier determination.

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36. **TIE PROCESS:** If two or more quotes offer the same unit price and are determined to be responsive and responsible, the Department will break the tie as follows: during the evaluation process, the Vendors that submitted tie quotes will be contacted and given a deadline to submit a written revised unit price for the affected item or items. If a tie still exists, the Department may repeat this process or look to past or current performance in order to secure the item or items. ODOT will not allow a tie quote situation to otherwise unnecessarily delay a potential award.
37. **DEVIATIONS:** Statements or modifications that deviate from the Invitation's terms, conditions, specifications and requirements (such as altering delivery, changing F.O.B., price list changes, etc.) may render the quote non-responsive if the Director determines that the deviation or modification affects the amount of the quote or results in a competitive advantage for the Vendor.
38. **FINDING FOR RECOVERY:** The Vendor affirmatively represents to the Department that it is not subject to a finding for recovery under Ohio Revised Code Section 9.24, or that it has taken the appropriate remedial steps required under Section 9.24 or otherwise qualifies under that section. The Vendor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this Contract, and any funds paid by the Department hereunder shall be immediately repaid to the Department, or an action for recovery may be immediately commenced by the Department for recovery of said funds.
39. **OHIO ETHICS LAW:** Contractor agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
40. **CERTIFICATE FOR DOMESTIC AND OHIO PREFERENCE FORM:** Those Vendors claiming preference for Domestic Source End Products and/or the Ohio preference, pursuant to Revised Code Sections 125.09 and 125.11 and Administrative Code Section 123:5-1-06 must complete the enclosed Certificate for Domestic and Ohio Preference Form. Vendors who qualify as an "Ohio" Vendor (offer an Ohio product or who have significant Ohio economic presence) or who qualify as a Border State Vendor are eligible to receive a five percent (5%) preference over non-Ohio/Border state Vendors. The Department reserves the right to clarify any information during the evaluation process. Vendors must complete this certification to receive the preference.
- Contractor shall comply with Executive Order 2011-12K issued by Ohio Governor John R. Kasich and shall abide by those requirements. Necessary forms shall be completed at the time of contracting. The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.
41. **POLITICAL CONTRIBUTIONS:** The Vendor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of the Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of the Ohio Revised Code Section 3517.13. The Vendor understands that knowingly making false statement with regard to the aforementioned certification is, in itself, grounds for the rescission of this Contract and may result in the loss of other contracts with the State of Ohio.
42. Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.
43. Any general rule of construction to the contrary notwithstanding this Contract shall be liberally construed in favor of the effect the purpose of this Contract and the policy and purposes of the Department. If any provisions in this Contract are found to be ambiguous, an interpretation consistent with the purpose of this Contract that would render the provision valid shall be favored over any interpretation that would render it invalid.
44. This Contract sets forth all understandings between the parties respecting the subject matter of this transaction, and all prior agreements, understandings, and representations, whether oral or written, representing this subject matter are merged into and superseded by this written Contract. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, to explain, or to vary any of the terms of this Contract.

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45. All expenses incurred by the Vendor in responding to this invitation or Proposal shall be borne by the Vendor, and in no event shall the Department be responsible for said expenses.
46. Addenda may be issued in response to changes in the Bid. Addenda must be acknowledged in a cover letter attached to the response. Failure to properly acknowledge any Addenda may result in a declaration of non-responsiveness by ODOT.
47. In order to protect the integrity of the bidding process, proposals shall not be prepared, completed or altered on ODOT premises. Any proposal which is prepared, completed or altered on ODOT premises may be disqualified.
48. Responses to this invitation or proposal may not be amended after they are received by ODOT.
49. Contractor shall maintain all records and files generated as a result of this bidding process. All records are to be considered the property of ODOT and shall be made available to ODOT staff on or off of Contractor's premises for review and audit. Upon completion of the contract, the Contractor shall deliver all records and files to ODOT in a format to be determined by ODOT (allowing for electronic vs. paper) or otherwise shall dispose of them as directed by ODOT.
50. Contractor shall permit ODOT or its designee access to all original books, records, invoices, and accounting procedures and practices of the contractor relevant to this invitation to bid. The contractor's financial records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP). The contractor shall retain all records for three years after the termination of a contract with ODOT.
51. Contractor shall provide the name and version of all financial software, program software, and inventory software to be used by the contractor for this RFP. The contractor must also demonstrate sound IT security and data retention policies, and comprehensive data recovery and back up plans to prevent unauthorized access or destruction of data.
52. ODOT reserves the right to request an on-site inspection of the Offeror's facilities. This on-site inspection may occur at any point of the bidding process and may be considered as a factor in Offeror selection.
53. The adequacy and sufficiency of all invoices shall be determined solely by ODOT. If ODOT determines that an invoice is inadequate or insufficient, or determines that further documentation or clarification is required, the burden of providing the required information or documentation is on the Contractor. ODOT shall notify the Contractor in writing of the inadequacy or insufficiency and may provide any information necessary to correct the inadequacy or insufficiency. If such notification of inadequacy or insufficiency is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.

Contractor expressly understands that ODOT does not have the ability to compensate Contractor for invoices submitted after the State of Ohio purchase order has been closed. Contractor must submit final invoices for payment no later than ninety (90) days after the ending date of this Contract. Failure to do so will be deemed a forfeiture of the remaining compensation due hereunder.
55. Either party may, at any time during the term of this contract, request amendments or modifications. Requests for amendments or modifications shall be in writing and shall specify the requested changes and the justifications of such changes. Should the parties consent to modification of the contract, then an amendment shall be drawn, approved, and executed in the same manner as the original contract.

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STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Banning the Expenditure of Public Funds on Offshore Services

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the CONTRACTOR/SUBCONTRACTOR affirms, understands and will abide by the requirements of Executive Order 2011-12K issued by Ohio Governor John Kasich. If awarded a contract, the CONTRACTOR/SUBCONTRACTOR becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. The Executive Order is attached and is available at the following website: (<http://governor.ohio.gov/ExecutiveOrders.aspx>).

The CONTRACTOR/SUBCONTRACTOR shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the CONTRACTOR/SUBCONTRACTOR not responsive the contract will not be executed. If the CONTRACTOR/SUBCONTRACTOR will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

8801 Tradeway
(Address)

San Antonio, Texas 78217
(City, State, Zip)

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

Collins Equipment Corp
(Name)

3005 E. N 55th Street Cleveland, OH 44127
(Address, City, State, Zip)

Buckeye Oil Equipment Company
(Name)

4377 Old Springfield Rd Vandalia, OH 45377
(Address, City, State, Zip)

Phoenix Environmental, Inc.
(Name)

11042 Hi Tech Drive Whitmore Lake, MI 48189
(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

Fueling Facilities of Ohio DOT
(Address)

(City, State, Zip)

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

Fueling Facilities of Ohio DOT
(Name)

(Address, City, State, Zip)

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3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

Ohio DOT State Facilities
(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

Ohio DOT State Facilities
(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

8801 Tradeway
(Address)

San Antonio, Texas 78217
(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

Not applicable
(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)