



Megan O'Callaghan  
 Deputy Director  
 Ohio Department of Transportation  
 Office of Contracts  
 1980 W. Broad Street 1<sup>st</sup> Floor  
 Columbus, OH 43223

August 10, 2012

RE: Price Quote - E.J. Ward Fuel Management System "BAFO"

E.J. Ward, Inc. (Ward) is pleased to submit our Best and Final Offer (BAFO) to the State of Ohio Department of Transportation RFP 509-12.

Ward has led the industry for more than 38 years in developing the most advanced fuel management technology and now brings a new level of product reliability, technical innovation and integrated solutions unmatched in today's industry to the Ohio Department of Transportation.

The included pricing revision reflects our comprehensive expertise in managing and costing large scale implementation programs such as you are about to undertake.

The significant reduction in installation costs was tied to the removal of Ward providing the WiFi Access Points (labor and materials) and with the understanding a "Gap Analysis" will still occur; Ward and our Contractor team removed the majority of our "unknown risk" cost in the original proposal. Ward agrees to provide a "location by location" mechanical and electrical installation cost after the sites visits are completed.

We also reviewed some individual components where bundled purchasing with other deals allowed us to pass the saving along to the state.

		BAFO	Original Offer	Decrease	Adj %
Statewide Fuel Management System	TOTAL	\$6,281,775.00	\$7,519,860.00	\$1,238,075.00	16%
ODOT Hosted AVL System includes 1 year data plan for 1870 real-time devices & 1600 Passive	TOTAL	\$1,281,385.00	\$1,369,193.00	\$87,808.00	6%
	TOTAL	\$7,563,160.00	\$8,889,043.00	\$1,325,883.00	15%

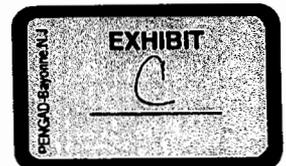
Ward's offering is designed to meet your current needs while offering the greatest flexibility to expand to future requirements with minimal cost. This unique scalable system approach is what distinguishes Ward as the "Lowest Total Cost of Ownership" supplier from other fuel management system manufactures.

Please review this quotation and do not hesitate to call for clarifications as the need may arise, I and other members of the Ward staff welcome the opportunity to respond to your questions.

Thank you in advance,

Robert E. Kettyle – Director of Sales  
 8801 Tradeway • San Antonio, TX • 78217  
[rkettyle@ejward.com](mailto:rkettyle@ejward.com) | San Antonio Office– 210.824.7383 | Mobile– 713.806.3711  
 | Office Fax 210.824.2031

CC: Ellen Hall – ODOT  
 Markay Ward – EJ Ward  
 Don Melochick – EJ Ward  
 Dave Girard – EJ Ward





Yellow "Highlighting denotes changes from the initial offering

E.J. Ward, Inc. BAFO - RFP 509-12

Statewide Fuel Management System	TOTAL	\$6,281,775.00
ODP Hosted AVL System Includes 1 year data plan for 1870 real-time devices & 1500 Passive	TOTAL	\$1,281,385.00
	TOTAL	\$7,563,160.00

Part #	Product Description	Qty	Unit Price	Extended
CASOFT - W4-E	Fuel View 4 - Enterprise Edition - MS SQL 2008 or Oracle 11G - Unlimited use license (Software, Dashboard & Reporting Engine)- Operates on SQL or Oracle Database - Standard: HD Module, OBD II Fleet Data Module, Ward Comm, Real-Time Connect (Requires Ward 4 FCT), Standard Export / Interface, Tank Monitoring Reporting Module,	1	\$21,000.00	\$21,000.00
				\$21,000.00

Part #	Product Description	Qty	Unit Price	Extended
<b>Software Implementation, Training &amp; Project Management</b>				
	Software Interface's and Implementation			
	Database Architect	40	\$190.00	\$7,600.00
	Software Implementation Sr.	160	\$150.00	\$24,000.00
	Software Programmer Sr	120	\$190.00	\$22,800.00
	Software Manager	80	\$225.00	\$18,000.00
	Software Implementation Jr.	160	\$90.00	\$14,400.00
	Software User and Administrator Training			
	Trainer	80	\$125.00	No Charge
	Project Management			
	Project Manager - 12 months	2,080	\$125.00	\$260,000.00
Note: Final requirements and customizations may affect price.				\$346,800.00

Part #	Product Description	Qty	Unit Price	Extended
<b>TERMINAL EQUIPMENTS</b>				
FCT-W4-01-05H	Ward Fuel Control Terminal (FCT-W4) - FCT-W4- 1-5 Hose Hose Count: - Standard: 7" Color VGA Screen (Industrial Grade), Stainless Alpha/Numeric Keypad + Softkey, Megstripe Reader, TCP/IP LAN Card, 1 GB RAM/ 8 GB HD, UPS, All Stainless Steel Construction, VIT / CANceiver Ready - Options: HID Reader, RTR 3121 WiFi - 802.11 /B/G, Real-Time Connect.	147	\$6,500.00	\$955,500.00
FCT-W4-06-10H	Ward Fuel Control Terminal (FCT-W4) - FCT-W4- 6-10 Hose Hose Count: - Standard: 7" Color VGA Screen (Industrial Grade), Stainless Alpha/Numeric Keypad + Softkey, Megstripe Reader, TCP/IP LAN Card, 1 GB RAM/ 8 GB HD, All Stainless Steel Construction, VIT / CANceiver Ready - Options: HID Reader, RTR 3121 WiFi - 802.11 /B/G, Real-Time Connect	2	\$7,000.00	\$14,000.00
FCT-W4TT-01-05H	Ward Fuel Control Terminal (FCT-W4TT) - FCT-W4- 1-5 Hose Truck Terminal Hose Count: - Standard: 7" Color VGA Screen (Industrial Grade), Stainless Alpha/Numeric Keypad + Softkey, Megstripe Reader, TCP/IP LAN Card, 1 GB RAM/ 8 GB HD, All Stainless Steel Construction, VIT / CANceiver Ready - Options: HID Reader, RTR 3121 WiFi - 802.11 /B/G. - <b>Not all options available on FCT-W4TT</b>	202	\$5,800.00	\$1,171,600.00
	Shipping and Handling	351	\$85.00	\$29,835.00
				\$2,170,935.00

Part #	Model/Description	Qty	Unit Price	Extended
<b>W4 CANCEIVER</b>				
CANceiver Kits	CANceiver Kit includes an OBD Connector cable			
CVR-W4-HD or LD	W4 CANceiver - Standard: WiFi, Accelerometer, 8 Digital I/O, 1 Analog I/O, Over-the-Air Reprogramming, 3 Serial Comm., 8 MB Memory-Options: External Module Support, GPS Support, Driver ID, Mobile Data Termina	4,869	\$260.00	\$1,265,940.00
W4-WARDTAG	Vehicle Equipment and Asset - EM-Tag	5,359	\$40.00	\$214,360.00
<b>VIT (Vehicle Information Transmitter) Kits</b>				
KIT-VIT-SX-ER	VIT-SX-KIT (includes an antenna & VIT-SX-INSTALL Kit)	1,957	\$110.00	\$215,270.00
<b>Programmers</b>				
W4 Programmer	CANceiver W4 WiFi Programmer Standard Kit - Hardware and Software	12	\$1,600.00	\$19,200.00
	Shipping and Handling	1	\$1,000.00	\$1,000.00
				\$1,715,770.00



Peripheral Products		Qty	List Price	Extended
Part #	Model/Description			
<b>Wireless Communications</b>				
COMM RTR 4121	AP 4121 802.11 WiFi Kit (includes standard antenna and power over Ethernet POE) - ODOT to provide WFII coverage to encompass the fuel Island and vehicle parking area when necessary.	0	\$1,500.00	\$0.00
<b>RF Hose Modules</b>				
KIT-HOSE-KIT	Hose Module Kit	482	\$285.00	\$137,370.00
HID-KEY-FOB	HID Key FOB	0	\$6.50	\$0.00
KEY-ENCODER-01	Fuel/Data Key Encoder	0	\$750.00	\$0.00
<b>Tank Monitoring Interface</b>				
TMI-INT	TLS Interface	47	\$1,200.00	\$56,400.00
	Shipping and Handling	1	\$200.00	\$200.00
				<b>\$193,970.00</b>

Hardware Installation		Qty	List Price	Extended
Part #	Product Description			
	FCT Mechanical and Electrical Installation - Estimated weighted average cost per location	146	\$7,000.00	\$1,022,000.00
Option 1	Gas Pumps to Cardreader above ground conduits (based on 2 pumps & 2 pulsers 10')		\$6,149.00	
Option 2	Gas Pumps to Cardreader underground (based on 2 pumps and 2 pulsers 10')		\$7,900.00	
Option 3	Sawcut, excavate, install 50' conduit outside replace concrete pull wires		\$8,465.00	
	Every Additional 50'		\$6,205.00	
Option 4	Run 50' conduit inside Building (ceiling level need a lift)		\$4,100.00	
	Every Additional 50'		\$1,875.00	
Option 5	Small Concrete Pad and Ballard		\$1,850.00	
Option 6	System Startup and Testing and FCT use Training		\$700.00	
Option 7	Fuel Truck Installation		\$3,000.00	
	System Startup and Testing and FCT use Training (351 Terminals)	351	\$700.00	\$245,700.00
	Tanker Truck Installation per Vehicle	202	\$2,800.00	\$565,600.00
	CANceiver Installation Training with 15 installations	1	\$3,500.00	No Charge
				<b>\$1,833,300.00</b>

GPS Solution Fee Structure		Qty	List Price	Extended
Part #	Product Description			
<b>W4 CANceiver Passive / Real Time GPS Optional Components</b>				
PASSIVE-ANT	Passive GPS device with Antenna for W4 CANceiver	1,600	\$50.00	\$80,000.00
PASSIVE-AVL	Passive GPS device stand-alone for asset without W4 CANceiver	0	\$300.00	\$0.00
REAL-TIME-ANT-CEL	Real-Time GPS with Cellular module and Antenna (Data Plan Extra)	1,870	\$285.00	\$532,950.00
<b>Customer Hosted Fleet View Software</b>				
	Includes software, Initial Setup and Training - Hosted on Customer servers, providing a fully turnkey system - (2) Two Year Warranty and Support Included	1	\$75,000.00	\$75,000.00
	Custom Software Development - Software Programmer Sr @ \$190.00 Per Hour	0	\$0.00	\$0.00
	Ward Track Fleet View - Annual License fee	1	\$9,995.00	\$9,995.00
<b>Monthly Data Plan Options for Fleet View Software</b>				
	Real Time GPS - Unlimited Monthly Data Plan - per vehicle / or device - Unlimited data per month - OBD, Google Maps	0	\$47.95	\$0.00
	Real Time GPS - Standard Monthly Data Plan - per vehicle / or device - 2 minute updates - Google Maps - Including Input Tracking (example - Plow or Sweeper on/off or up/down)	1870	\$26.00	\$48,620.00
<b>Annual Data Plan Fees</b>				<b>\$583,440.00</b>



E.J. Ward, Inc. GAP PRICING R4 - RFP 509-12 - Date 9-28-2012

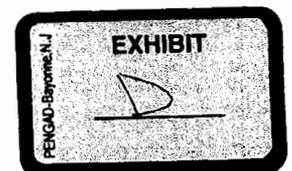
		GAP PRICE	
Statewide Fuel Management System		TOTAL	\$6,048,809.00
ODOT Bonded AVL System ODOT Bonded Data Plan TBD for 1870 Ward Provided Real Time Device		TOTAL	\$617,945.00
		TOTAL	\$6,666,754.00

Ward Fuel View Software - Note: Final software requirements and customizations may affect final price				
Part #	Product Description	Qty	Unit Price	Extended
CASOFT - W4-E	<b>Fuel View 4 - Enterprise Edition - MS SQL 2008 or Oracle 11G</b> - Unlimited use license (Software, Dashboard & Reporting Engine) - Operates on SQL or Oracle Database - Standard: HD Module, OBD II Fleet Data Module, Ward Comm, Real-Time Connect (Requires Ward 4 FCT), Standard Export / Interface, Tank Monitoring Reporting Module.	1	\$21,000.00	\$21,000.00
				\$21,000.00

Software Implementation, Training & Project Management				
Part #	Product Description	Qty	Unit Price	Extended
<b>Software Interface's and Implementation</b>				
	Database Architect	120	\$190.00	\$22,800.00
	Software Implementation Sr.	160	\$150.00	\$24,000.00
	Software Programmer Sr	160	\$190.00	\$30,400.00
	Software Manager	120	\$225.00	\$27,000.00
	Software Implementation Jr.	160	\$90.00	\$14,400.00
	Software User and Administrator Training - (Total of 80 hours)	80	No Charge	No Charge
	Project Manager - 12 months	1	\$260,000.00	\$260,000.00
	Permits and Inspections	1	\$188,000.00	\$188,000.00
* Note: Final requirements and customizations may affect price				\$566,600.00

TERMINAL REQUIREMENT - Note: Final software requirements and customizations may affect final price				
Part #	Product Description	Qty	Unit Price	Extended
FCT-W4-01-06H	<b>Ward Fuel Control Terminal (FCT-W4) - FCT-W4- 1-5 Hose</b> Hose Count: - Standard: 7" Color VGA Screen (Industrial Grade), Stainless Alpha/Numeric Keypad + Softkey, Megastripe Reader, TCP/IP LAN Card, 1 GB RAM / 8 GB HD, UPS, All Stainless Steel Construction, VIT / CANceiver Ready - Options: HID Reader, RTR 3121 WIFI - 802.11 B/G, Real-Time Connect.	187	\$6,500.00	\$1,215,500.00
FCT-W4-06-10H	<b>Ward Fuel Control Terminal (FCT-W4) - FCT-W4- 6-10 Hose</b> Hose Count: - Standard: 7" Color VGA Screen (Industrial Grade), Stainless Alpha/Numeric Keypad + Softkey, Megastripe Reader, TCP/IP LAN Card, 1 GB RAM / 8 GB HD, UPS, All Stainless Steel Construction, VIT / CANceiver Ready - Options: HID Reader, RTR 3121 WIFI - 802.11 B/G, Real-Time Connect	3	\$7,000.00	\$21,000.00
FCT-W4TT-01-05H	<b>Ward Fuel Control Terminal (FCT-W4TT) - FCT-W4- 1-5 Hose Truck Terminal</b> Hose Count: - Standard: 7" Color VGA Screen (Industrial Grade), Stainless Alpha/Numeric Keypad + Softkey, Megastripe Reader, TCP/IP LAN Card, 1 GB RAM / 8 GB HD, All Stainless Steel Construction, VIT / CANceiver Ready - Options: HID Reader, RTR 3121 WIFI - 802.11 B/G. <u>Not all options available on FCT-W4TT</u>	0	\$5,800.00	\$0.00
	W4 Cellular Communication Hardware and Installation / Assembly Kit (Customer to provide SIM) - Includes weather rated switch	40	\$1,800.00	\$72,000.00
	Shipping and Handling	190	\$100.00	\$19,000.00
				\$1,327,500.00

Part #	Model/Description	Qty	Unit Price	Extended
<b>CANceiver Kits</b>				
CVR-W4-HD or LD	W4 CANceiver - Standard: WiFi, Accelerometer, 8 Digital I/O, 1 Analog I/O, Over-the-Air Reprogramming, 3 Serial Comm., 8 MB Memory - Options: External Module Support, GPS Support, Driver ID, Mobile Data Terminal	4,869	\$260.00	\$1,265,940.00
W4-WARDTAG	Vehicle Equipment and Asset - EM-Tag	5,359	\$40.00	\$214,360.00
<b>VIT (Vehicle Information Transmitter) Kits</b>				
KIT-VIT-SX-ER	VIT-SX-KIT (includes an antenna & VIT-SX-INSTALL KIT)	1,957	\$110.00	\$215,270.00
<b>Programmers</b>				
W4 Programmer	CANceiver W4 WiFi Programmer Standard Kit - Hardware and Software	12	\$1,600.00	\$19,200.00
	Shipping and Handling	1	\$1,000.00	\$1,000.00
				\$1,715,770.00





Part #	Model/Description	Qty	Unit Price	Extended
<b>Wireless Communications</b>				
COMM RTR 4121	AP 4121 802.11 WiFi Kit (includes standard antenna and power over Ethernet POE) - ODOT to provide WiFi coverage to encompass the fuel island and vehicle parking area when necessary.	0	\$1,500.00	\$0.00
<b>RF Hose Modules</b>				
KIT-HOSE-KIT	Hose Module Kit	363	\$285.00	\$103,455.00
HID-KEY-FOB	HID Key FOB	0	\$6.50	\$0.00
KEY-ENCODER-01	Fuel/Data Key Encoder	0	\$750.00	\$0.00
<b>Tank Monitoring Interface</b>				
TMHINT	TLS Interface	60	\$1,200.00	\$72,000.00
	Shipping and Handling	1	\$200.00	\$200.00
				<b>\$175,655.00</b>

Part #	Product Description	Qty	Unit Price	Extended
	FCT Mechanical and Electrical Installation - average cost per location	188	\$10,693.00	\$2,010,284.00
	FCT Startup and System Testing with use Training	190	\$1,000.00	\$190,000.00
	Tanker Truck Installation per Vehicle	0	\$3,500.00	\$0.00
	CANceiver Installation Training with 15 vehicle installations (12 locations)	12	\$3,500.00	\$42,000.00
				<b>\$2,242,284.00</b>

Part #	Product Description	Qty	Unit Price	Extended
<b>W4 CANceiver Passive / Real Time GPS Optional Components</b>				
PASSIVE-ANT	Passive GPS device with Antenna for W4 CANceiver	0	\$50.00	\$0.00
PASSIVE-AVL	Passive GPS device stand-alone for asset without W4 CANceiver	0	\$300.00	\$0.00
WT - 330 I Real-Time	GSM / GPRS, CDMA 1xRTT, or HSPA configurations - Internal cellular and GPS antenna option for easy installation - High sensitivity GPS - 5 inputs / 3 outputs / 1-wire interface for driver ID - Dual serial ports - Garmin FM support - Power management sleep modes - Automatic, over-the-air configuration and firmware download - Internal back up battery	1,870	\$285.00	\$532,950.00
<b>Customer Hosted Fleet View Software</b>				
	Includes software, Initial Setup and Training - Hosted on Customer servers, providing a fully turnkey system - (2) Two Year Warranty and Support Included	1	\$75,000.00	\$75,000.00
	Custom Software Development - Software Programmer Sr @ \$190.00 Per Hour	0	\$0.00	\$0.00
	Ward Track Fleet View - Annual License fee	1	\$9,995.00	\$9,995.00
				<b>\$617,945.00</b>

Part #	Product Description	Qty	Unit Price	Extended
<b>Monthly Data Plan Options for Fleet View Software</b>				
	Real Time GPS - Unlimited Monthly Data Plan - per vehicle / or device - Unlimited data per month - OBD, Google Maps	0	\$47.95	\$0.00
	Real Time GPS - Standard Monthly Data Plan - per vehicle / or device - 2 minute updates - Google Maps - Including Input Tracking (example - Plow or Sweeper on/off or up/down)	0	\$26.00	\$0.00
<b>Annual Data Plan Fees</b>		12	\$0.00	\$0.00

ODOT RFP #509-12

AMENDMENT TO AGREEMENT BETWEEN  
EJ WARD AND  
THE OHIO DEPARTMENT OF TRANSPORTATION  
FOR BILLING STRUCTURE MODIFICATIONS

This AMENDMENT to the Agreement is entered into by and between the State of Ohio, Department of Transportation, hereinafter called ODOT, 1980 West Broad Street, Columbus, Ohio 43223, and EJ Ward, 8801 Tradeway, San Antonio, Texas 78217, hereinafter called the VENDOR.

The Parties agree to amend the terms and conditions of the original Agreement as follows:

- A. The parties agree to amend the billing structure for the RFP #509-12 pursuant to the attached EXHIBIT 1.

IN WITNESS THEREFORE, the parties hereunto have caused this AMENDMENT to the original Agreement to be executed by officials thereunto duly authorized as of the day and year last written below.

STATE OF OHIO  
DEPARTMENT OF TRANSPORTATION

EJ WARD

By: *Jerry Wray*  
Jerry Wray  
Director

By: *Markay Ward*  
Markay Ward  
Vice President

Date: 3/19/13

Date: 3-11-13



EXHIBIT 1

Proposed New Billing Model  
March 8, 2013

Purpose:

Reach agreement regarding a new billing model.

Issues & Method:

- 1) The price sheet, "E.J. Ward, Inc. GAP PRICING R4 – RFP 509-12 – Date 9-28-2012" was used as the starting point since this is the "line item" pricing that was accepted as the baseline after the gap analysis.
- 2) Part of the challenge with the milestone billing method was handling the changing quantities based on normal business practices of acquiring and disposing of vehicles and redistribution of site locations, etc. Under the line item method, quantities will only be billed as they are shipped and will automatically adjust invoicing based on the quantity ODOT requires upon release of the order. ODOT will confirm receipt of the quantities and approve the invoice to be paid.
  - a. ODOT has paid EJ Ward \$2,130,244.27 to date. EJ Ward reviewed what has shipped and the services provided through January 31, 2013 and applied this to the payments of \$2,130,244.27. The GAP payment of \$756,316 is being divide by 8 and will be deducted from 8 invoices. Applying the new billing methods EJ Ward would have billed \$1,133,704 from the start of the project through January 31, 2013. For February 2013 the invoice would be \$756,102.33. Using what is paid to date, subtracting the 10% retainer and Gap Analysis, the billed through January 31, 2013 is covered with the current payments and all but \$137,818.42 is covered for the February invoice. Once this new billing method is approved, EJ Ward will invoice ODOT for the \$137,818.42 for February 2013.
- 3) Project management will be broken out as a separate line item to be billed on a monthly basis.
- 4) Interfaces were included under the software category as a total of the interface hours divided by the number of interfaces (EMS/TMS, Voyager and Employee) for simplification purposes.
- 5) 10% retainage will be indicated and deducted from the total of each invoice going forward to accrue the retainage as shipments and tasks are completed. One final invoice for the total retained amount will be issued at the end of warranty to account for the accrual.
  - a. The initial 10% retainage is reflected on the spreadsheet as a deduction to the billing that has occurred to date. This will make sure that the 10% retainage is accounted for based on actual hardware and work performed instead of an "arbitrary" number.
  - b. Half way into the warranty period ODOT will review the system quality, stability and overall satisfaction with EJ Ward and may pay 50% of the warranty retainer at that time.
- 6) Change orders will be billed as they are shipped or upon completion if site work is involved. Change orders are subject to the 10% retainage.
- 7) Contractor installation will be billed when the site inspection is obtained for the site.
- 8) Ward installation will be billed when the site completion checklist has been completed and signed off by all parties.



**OHIO DEPARTMENT OF TRANSPORTATION**  
CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223  
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

EJ Ward  
**Attn:** Markay Ward, Vice President  
8801 Tradeway  
San Antonio, Texas 78217

April 10, 2013

Via email: [mward@ejward.com](mailto:mward@ejward.com)  
Via fax: 210-824-2031  
Via certified mail

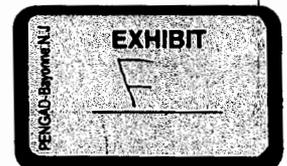
**Re: DECLARATION OF DEFAULT & TERMINATION OF CONTRACT**  
Contract: ODOT RFP #509-12  
Commodity: Fuel Management System

Dear Ms. Ward:

This correspondence shall serve as ODOT's declaration of default and termination of Contract #509-12. Pursuant to paragraph 28 found on page 10 of the Standard Terms and Conditions of this contract, this contract can be terminated immediately for non-compliance with the contract deliverable or terms, or with 30 days notice. In an effort to accommodate EJ Ward, the Department will grant your company 30 days to remove their equipment from ODOT's facilities.

Without reciting the many breaches of the agreement and multiple attempts by ODOT to work with EJ Ward and reconcile the deficiencies in the product your company provided under this RFP, the following is a non-exhaustive list of the factors ODOT considered when it made the determination that termination was in the best interest of the Department:

1. **Networking Setup:** Additional networking equipment is needed to implement the Ward solution. This equipment was not originally scoped or anticipated, causing the project to cost several hundred thousand more than originally, scoped.
2. **Canciever Issue:** ODOT vehicles, including but not necessarily limited to Ford F150's can and have lost power while using the EJ Ward equipment.
3. **Wheelersburg Testing:** Wheelersburg site was unready for testing despite a week notice to EJ Ward.
4. **FuelView Software:** FuelView is the name of the software used to interact with the system and is not working properly. At times transactions "hang" and therefore we would not be able to see transactions in the system. The EJ Ward proposed solution was for us to monitor the software and if we noticed that we were not getting transactions to restart a specific Windows service.
5. **Missing Transactions:** On 3/25/13 ODOT travelled to the Allen Co. 4<sup>th</sup> Street Outpost and completed 4 transactions. ODOT believes there are missing at least one of the four transactions and one transaction is missing volume data. We have asked about the missing/incomplete transactions several times but have not gotten a response.
6. **FCT Auto updates turned on:** The Ward Fuel Control Terminal (FCT) requires periodic software updates. Currently updates are not controlled, tested, are coming from multiple locations at least some of which are NOT controlled by EJ Ward.



7. **Request for overview of technology:** We requested on 3-21-13 that we review the technology with EJ Ward, it was discussed at our daily meeting. At the time of this writing we still do not have a meeting scheduled.
8. **Project Management:** The original project manager Ward submitted left the company and the replacement was a consultant who had been with the company for just a few days before starting work at ODOT, and they are not assigned to help with IT related aspects of the project, and that consultant project manager now is only available 12 hours per week; this violates the terms of the RFP.
9. **Shipping Issues:** We have had multiple issues getting the correct counts for equipment. It has taken a consolidated effort and multiple meetings to come to some resolution to getting the equipment counts correct.
10. **Training Issues:** December 2012; EJ Ward's trainer was very unprepared for training, did not display the level of experience and professionalism expected, provided no clear vision of what they were going to do or accomplish during the training session, and did not cover all the components of the training.
11. **Overall Poor Communication and Planning:** The lack of an on-site project manager dedicated to handle technical issues has mounted into an overall lack of communication and planning from EJ Ward on the technical side of the project.

Therefore, after multiple failed attempts to cure the performance problems the EJ Ward Fuel Management System product including an addendum for additional funds, and for the reasons set forth in paragraphs 22, 23, and 28 of the Standard Terms and Conditions, and for violations of other provision of RFP #509-12, and for the reasons set forth above, the Director of the Ohio Department of Transportation declares the agreement between the Department and EJ Ward for the execution of RFP #509-12 **TERMINATED**.

Feel free to contact Equipment Management Mark Gnatowski at 614-351-2830 or Brad Boseker at 614-351-5538 if you have questions regarding this termination or the process for EJ Ward to remove its equipment from ODOT's property.

Respectfully,



Jerry Wray  
Director

TPP

c: Patrick Piccininni, Project File



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Stipulation of Consent to Move or Plead was served via electronic mail and U.S. First Class mail upon the following counsel this 17<sup>th</sup> day of March, 2014:

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

*Attorney for Plaintiff Ohio Department of  
Transportation*

/s/ Hansel H. Rhee

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

OHIO DEPARTMENT OF	:	
TRANSPORTATION,	:	
	:	
Plaintiff,	:	
	:	Case No. 14CV-02-1354
v.	:	
	:	Judge David Fais
E.J. WARD, INC.,	:	
	:	
Defendant.	:	

**ANSWER AND COUNTERCLAIM OF DEFENDANT E.J. WARD, INC.**

For its Answer to the Complaint of the Ohio Department of Transportation (“ODOT”), Defendant E.J. Ward, Inc. (“E.J. Ward”) states as follows:

1. In response to Paragraph 1, E.J. Ward states that the documents attached to the Complaint speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the documents. E.J. Ward denies all remaining allegations in Paragraph 1.

2. E.J. Ward denies the allegations of Paragraph 2.

3. In response to Paragraph 3, E.J. Ward admits that ODOT paid E.J. Ward \$2,130,243.84 of the \$6,048,809.00 contract price in connection with E.J. Ward’s work on the system. E.J. Ward denies all remaining allegations of Paragraph 3.

4. E.J. Ward denies the allegations of Paragraph 4.

**THE PARTIES**

5. Upon information and belief, E.J. Ward admits the allegations of Paragraph 5.

6. E.J. Ward admits the allegations of Paragraph 6.

**JURISDICTION AND VENUE**

7. The Complaint does not contain any paragraphs numbered 7 through 9.

8. E.J. Ward admits the allegations of Paragraph 10 as it relates to the Complaint.

9. In response to Paragraph 11, E.J. Ward states that Exhibit B speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit B. E.J. Ward admits the remaining allegations of Paragraph 11.

10. E.J. Ward admits the allegations of Paragraph 12 as it relates to the Complaint.

**COUNT I. BREACH OF CONTRACT**

11. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

12. In response to Paragraph 14, E.J. Ward states that Exhibit A speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit A. Answering further, E.J. Ward is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding ODOT's intent, and therefore denies same. E.J. Ward denies all remaining allegations of Paragraph 14.

13. In response to Paragraph 15, E.J. Ward states that Exhibit C speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit C. E.J. Ward admits the remaining allegations of Paragraph 15.

14. In response to Paragraph 16, E.J. Ward states that Exhibit A speaks for itself and denies any allegation that alters or mischaracterizes the content or meaning of Exhibit A. E.J. Ward admits the remaining allegations of Paragraph 16.

15. In response to Paragraph 17, E.J. Ward states that Exhibits D and E speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the Exhibits. E.J. Ward admits the remaining allegations of Paragraph 17.

16. In response to Paragraph 18, E.J. Ward admits that the installation of the system started sometime in the fall of 2012. E.J. Ward denies the remaining allegations of Paragraph 18.

17. E.J. Ward denies the allegations of Paragraph 19.

18. In response to Paragraph 20, E.J. Ward admits that ODOT improperly terminated the contract with E.J. Ward. E.J. Ward denies the remaining allegations of Paragraph 20.

19. E.J. Ward denies the allegations of Paragraph 21.

20. E.J. Ward denies the allegations of Paragraph 22.

21. E.J. Ward denies the allegations of Paragraph 23.

**COUNT II. BREACH OF EXPRESS WARRANTY**

22. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

23. In response to Paragraph 25, E.J. Ward states that the terms of the applicable contracts and RFP speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the contract and/or RFP. E.J. Ward denies all remaining allegations of Paragraph 25.

24. In response to Paragraph 26, E.J. Ward states that the terms of the applicable contract speak for themselves and denies any allegation that alters or mischaracterizes the content or meaning of the contract or any of its terms.

25. E.J. Ward denies the allegations of Paragraph 27.

26. E.J. Ward denies the allegations of Paragraph 28.

27. E.J. Ward denies the allegations of Paragraph 29.

28. E.J. Ward denies the allegations of Paragraph 30.

**COUNT III. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

29. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

30. Paragraph 32 contains legal conclusions and therefore no responsive pleading is required. To the extent such is required, E.J. Ward denies same and leaves ODOT to its proof.

31. E.J. Ward denies the allegations of Paragraph 33.

32. E.J. Ward denies the allegations of Paragraph 34.

33. E.J. Ward denies the allegations of Paragraph 35.

34. E.J. Ward denies the allegations of Paragraph 36.

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

35. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

36. E.J. Ward denies the allegations of Paragraph 38.

37. E.J. Ward denies the allegations of Paragraph 39.

38. E.J. Ward denies the allegations of Paragraph 40.

39. E.J. Ward denies the allegations of Paragraph 41.

**COUNT V. UNJUST ENRICHMENT**

40. E.J. Ward incorporates by reference the above-numbered paragraphs as though set forth herein.

41. E.J. Ward denies the allegations of Paragraph 43.

42. E.J. Ward denies the allegations of Paragraph 44.

43. E.J. Ward denies the allegations of Paragraph 45.

44. E.J. Ward denies the allegations of Paragraph 46.

**PRAYER FOR RELIEF**

45. In response to the un-numbered "WHEREFORE" Paragraph and its subsections, E.J. Ward denies same.

46. E.J. Ward denies each and every allegation contained in ODOT's Complaint not specifically admitted herein as true.

**AFFIRMATIVE AND OTHER DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

47. The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

48. The Complaint is barred, in whole or in part, by the doctrines of estoppel, waiver, and laches.

**THIRD AFFIRMATIVE DEFENSE**

49. The Complaint is barred by the applicable statutes of limitation.

**FOURTH AFFIRMATIVE DEFENSE**

50. The Complaint is barred, in whole or in part, by ODOT's failure to mitigate damages.

**FIFTH AFFIRMATIVE DEFENSE**

51. The Complaint is barred, in whole or in part, by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

52. The Complaint is barred, in whole in in part, by ODOT's breach of the contract.

**SEVENTH AFFIRMATIVE DEFENSE**

53. ODOT's damages, if any, are subject to the doctrine of set-off due to ODOT's improper termination of the applicable contract(s).

**EIGHTH AFFIRMATIVE DEFENSE**

54. The Complaint is barred, in whole or in part, because allowing ODOT to recover damages would unjustly enrich ODOT by permitting it to knowingly and unjustly retain a benefit that E.J. Ward conferred on ODOT through performance of the gap analysis and fuel management system design, installation, and delivery.

**NINTH AFFIRMATIVE DEFENSE**

55. The Complaint is barred, in whole or in part, by warranty limitations and/or disclaimers.

**TENTH AFFIRMATIVE DEFENSE**

56. The Complaint is barred, in whole or in part, by ODOT's own conduct and/or inaction.

**ELEVENTH AFFIRMATIVE DEFENSE**

57. ODOT's claims are barred, in whole or in part, by ODOT's failure to exhaust all contractual remedies.

**TWELFTH AFFIRMATIVE DEFENSE**

58. ODOT's claims are barred, in whole or in part, by ODOT's failure to exhaust all administrative remedies.

**THIRTEENTH AFFIRMATIVE DEFENSE**

59. ODOT's claims are barred, in whole or in part, for failure to satisfy conditions precedent.

**FOURTEENTH AFFIRMATIVE DEFENSE**

60. E.J. Ward reserves and asserts all affirmative defenses available under any applicable federal or state law, including the Ohio Rules of Civil Procedure.

**FIFTEENTH AFFIRMATIVE DEFENSE**

61. E.J. Ward reserves the right to supplement and amend its Answer and affirmative defenses with additional defenses that become available or apparent during the course of investigation, preparation, or discovery.

WHEREFORE, E.J. Ward demands that ODOT's Complaint be dismissed with prejudice and that E.J. Ward recover all of its attorneys' fees, expenses, and costs, and for such other relief as the Court may deem just and proper.

**COUNTERCLAIM**

For its Counterclaim against Plaintiff The Ohio Department of Transportation ("ODOT"), Defendant E.J. Ward, Inc. ("E.J. Ward") states as follows:

62. ODOT is a Department of the State of Ohio as defined by R.C. 121.02(D), with its headquarters located in Franklin County at 1980 West Broad Street, Columbus, Ohio.

63. E.J. Ward is a Nevada Corporation that has been in business since 1974.

64. E.J. Ward specializes in automated fuel management and vehicle telematics products for vehicle fleets throughout the United States.

65. At no time during E.J. Ward's forty-year history has it ever been terminated for default on any of its projects.

66. On or about June 25, 2012, ODOT issued Request for Proposal #509-12 for Automated Fuel Management System (the "RFP") in order to obtain proposals for the implementation of an automated fuel management system for ODOT's vehicle fleet and fueling stations. [A copy of the RFP was attached to ODOT's Complaint as Exhibit B.]

67. The purpose of this fuel management system was to increase the efficiency and effectiveness of ODOT's business functions related to:

- ODOT's vehicle fleet lifecycle and performance management;
- Monitoring and management of ODOT's vehicle fleets' fuel consumption;
- Audit/compliance monitoring; and
- Inventory tracking.

68. This fuel management system included the installation of various electronic hardware and software at ODOT's approximately 147 fueling locations throughout the State of Ohio.

69. Section 5.4.4 of the RFP required any submitted bid proposal to contain a work plan. The work plan was required to include a gap analysis.

70. The gap analysis consisted of a detailed site assessment conducted by the contractor for all of ODOT's approximate 147 fueling stations in order to determine the extent of civil work required to install the necessary hardware and software for the fuel management system. These civil work items include, but are not limited to: ensuring the availability of power sources; installing proper conduit and electrical wiring to support hardware and software; and excavation and re-paving of concrete/asphalt to bury electrical cables and/or wiring.

71. Section 12 of the RFP provided the Project Tasks to be addressed by the proposals, which specified that the gap analysis must be completed within 30 days of the contract award. Pursuant to the terms of the RFP, the cost for the gap analysis was set at 10% of the bidder's final contract price.

72. Because ODOT was unaware of the amount of work needed to support a fuel management system at each of the approximate 147 fueling sites, ODOT reserved the right to

cancel the RFP if the gap analysis findings indicated a scope of work that exceeded ODOT's budget for this project.

73. Due to the independent value of a detailed assessment showing the work necessary to support a fuel management system, ODOT agreed to pay the successful contractor for the gap analysis, regardless of whether the RFP was canceled or not.

74. E.J. Ward submitted a bid in response to the RFP on or about July 20, 2012.

75. On August 10, 2012, E.J. Ward submitted its Best and Final Offer to the RFP in the total amount of \$7,563,160.00. Per the terms of the RFP, 10% of that total bid, or \$756,316.00, was for completion of the gap analysis. ODOT accepted E.J. Ward's Best and Final Offer.

76. On August 27, 2012, E.J. Ward entered into a written agreement with ODOT to design, install, and deliver the Automated Fuel Management System at numerous ODOT fueling stations throughout Ohio (the "Contract"). [A copy of the applicable Contract was attached to ODOT's Complaint as Exhibit A.]

77. Immediately thereafter, E.J. Ward commenced with the gap analysis to ensure completion of same within the 30-day requirement imposed by ODOT.

78. On September 28, 2012, after E.J. Ward completed its gap analysis and provided same to ODOT, E.J. Ward calculated the final Contract price to be \$6,666,754.00.

79. E.J. Ward began the design, installation, and delivery of the Automated Fuel Management System in October 2012 pursuant to the terms of the Contract.

80. E.J. Ward entered into contracts with three different subcontractors in order to complete the work identified in the gap analysis that was needed to support the Automated Fuel Management System.

81. E.J. Ward's subcontractors performed the work necessary to support the Automated Fuel Management System at over 60 of ODOT's fueling stations.

82. E.J. Ward paid its subcontractors in full for all of this completed work.

83. During the next few months, E.J. Ward completed installation of the Automated Fuel Management System at over 45 of ODOT's fueling sites.

84. Of these 45 completed sites, ODOT inspected and accepted E.J. Ward's installation at approximately 9 of those fueling sites.

85. During the course of this project, E.J. Ward submitted invoices to ODOT based on the milestone schedule contained in the original RFP, as directed by ODOT.

86. The milestone schedule, however, was comprised of only four project tasks: (1) "Project Plan & System Design"; (2) "System Testing"; (3) "Statewide Implementation"; and (4) "Completion of Warranty."

87. Because of the broad and general nature of these project tasks, preparing invoices that accurately reflected the exact services performed, or the percentage complete of each of these project tasks, was very difficult.

88. As a result, E.J. Ward and ODOT had extensive discussions related to each submitted invoice to ensure that both parties understood and agreed to the amount of work that had been completed and accepted by ODOT.

89. Based on this collaborative process, E.J. Ward was paid a total of \$2,130,244.27 on three separate invoices that were reviewed and approved by ODOT.

90. In or around March 2013, ODOT changed and/or re-assigned its project management team for this RFP.

91. Shortly thereafter, ODOT's new project management team requested that E.J. Ward amend its billing model due to the difficulty ODOT's Team had in determining what specific work items were included in E.J. Ward's invoices. However, ODOT's previous project management team had conducted an extensive review of each of E.J. Ward's invoices to confirm what work had been completed.

92. In an effort to appease ODOT's new project management team, in March 2013 E.J. Ward and ODOT entered into an amendment to their agreement that incorporated a new billing model. The new billing model amendment memorialized that as of the date of the amendment, ODOT had paid E.J. Ward \$2,130,244.27 of the Contract price. The billing model also provided that the payment of \$756,316 previously made by ODOT for the completed gap analysis would be divided by 8 and applied to the next eight future invoices.

93. Neither the Contract amendment nor the billing model made any mention of alleged contractual deficiencies or defective work on the part of E.J. Ward.

94. E.J. Ward continued installing the Automated Fuel Management System at various fueling stations.

95. On April 10, 2013, less than a month after the Contract amendment and billing model change, ODOT sent E.J. Ward a Declaration of Default and Termination of Contract (the "Termination Letter"). [A copy of the Termination Letter was attached to ODOT's Complaint as Exhibit F.]

96. The Termination Letter purported to terminate the Contract pursuant to Paragraph 28 of the Contract for "non-compliance with the contract deliverable or terms."

97. Although the Termination Letter provided a “non-exhaustive list of factors” that ODOT considered when making the determination to terminate the Contract, ODOT provided no chance for E.J. Ward to cure or address any of the purported deficiencies.

98. ODOT has halted all work on the Contract, denied any additional payments to E.J. Ward for work already performed and work due, and refused E.J. Ward access to any fueling station so that E.J. Ward is prevented from carrying out its duties and obligations under the Contract.

**COUNT I: DECLARATORY JUDGMENT**

99. E.J. Ward incorporates the preceding paragraphs of this Counterclaim as if fully rewritten herein.

100. The Contract was a valid and binding contract at all relevant times of the Counterclaim.

101. E.J. Ward performed all of its duties and obligations under the Contract.

102. Through its April 10, 2013 Termination Letter, ODOT attempted to terminate the Contract, even though E.J. Ward had complied with all contract deliverables and terms and none of the bases for termination required by the Contract exist.

103. ODOT has breached the terms of the Contract by improperly terminating the Contract and by failing to fully compensate E.J. Ward.

104. A real, genuine, and justiciable controversy exists between E.J. Ward and ODOT involving a legal right or interest, and speedy relief is necessary to preserve the parties’ rights.

105. E.J. Ward is entitled to a declaratory judgment finding that ODOT improperly terminated the Contract and owes E.J. Ward its attorneys’ fees and costs incurred to seek this relief.

**COUNT II: BREACH OF CONTRACT FOR IMPROPER TERMINATION**

106. On or about August 27, 2012, E.J. Ward and ODOT entered in the Contract.

107. Pursuant to the terms of the Contract, E.J. Ward agreed to provide the design, installation, and delivery of the fuel management system for ODOT's vehicle fleet fueling stations. As part of the design of the system, E.J. Ward was required to, and did, perform a gap analysis of ODOT's fueling station.

108. E.J. Ward performed all of its duties and obligations under the Contract.

109. Through its April 10, 2013 Termination Letter, ODOT attempted to terminate the Contract, even though E.J. Ward had complied with all contract deliverables and terms and none of the bases for termination required by the Contract exist.

110. ODOT has materially breached its Contract with E.J. Ward by attempting to improperly terminate E.J. Ward when there were no valid grounds for termination.

111. As a direct and proximate result of the foregoing, E.J. Ward has suffered actual damages, including lost profits, overhead, damage to reputation, and all such other amounts to be proven at trial.

**COUNT III: BREACH OF CONTRACT**

112. E.J. Ward incorporates the preceding paragraphs of this Counterclaim as if fully rewritten herein.

113. E.J. Ward completed its duties and obligations pursuant to the Contract.

114. Pursuant to the amended Contract and revised billing model, E.J. Ward submitted an invoice to ODOT in the amount of \$169,818.43.

115. ODOT, however, has breached the Contract by refusing to pay the invoice.

116. Additionally, ODOT has breached the terms of the Contract by improperly terminating the Contract.

117. As a direct and proximate result of the foregoing, E.J. Ward has suffered actual damages in an amount to be proven at trial.

**COUNT IV: UNJUST ENRICHMENT**

118. E.J. Ward incorporates the preceding paragraphs of this Counterclaim as if fully rewritten herein.

119. E.J. Ward performed design, installation, and delivery of fuel management systems for ODOT's vehicle fleet fueling stations.

120. E.J. Ward conferred a benefit upon ODOT by performing the design, installation, and delivery of fuel management systems for various fueling stations, and ODOT knowingly accepted that benefit.

121. ODOT knew or should have known that E.J. Ward expected payment equal to the fuel management system work performed by E.J. Ward.

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

123. As a direct and proximate result of the unjust enrichment by ODOT, E.J. Ward has been damaged in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, E.J. Ward requests that judgment be entered in its favor against ODO, and that E.J. Ward by granted the following relief:

A. As to Count I: a declaratory judgment in favor of E.J. Ward that ODOT improperly terminated the Contract;

- B. As to Counts II through IV: a judgment for compensatory damages in an amount to be proven at trial, prejudgment and post judgment interest, attorneys' fees, costs, and expenses; and
- C. Such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Hansel H. Rhee

Hansel H. Rhee (0076093)

John P. Gilligan (0024542)

Nicole R. Woods (0084865)

Ice Miller LLP

250 West Street, Suite 700

Columbus, OH 43215

Phone: 614.462.2700

Fax: 614.462.5135

[Hansel.Rhee@icemiller.com](mailto:Hansel.Rhee@icemiller.com)

[John.Gilligan@icemiller.com](mailto:John.Gilligan@icemiller.com)

[Nicole.Woods@icemiller.com](mailto:Nicole.Woods@icemiller.com)

*Attorneys for Defendant E.J. Ward, Inc.*

**JURY DEMAND**

Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc., demands a trial by jury on all issues so triable.

*/s/ Hansel H. Rhee* \_\_\_\_\_

Hansel H. Rhee

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing ANSWER AND COUNTERCLAIM was served upon all parties of record via the Court's electronic filing system this 15th day of April, 2014.

*/s/ Hansel H. Rhee* \_\_\_\_\_

Hansel H. Rhee

April 22, 2014

Writer's Direct Number: 614 462-2319  
Direct Fax: 614 232-6883  
Internet: Nicole.Woods@icemiller.com

**Delivered via Hand Delivery**

Clerk of the Court  
The Court of Claims of Ohio  
The Ohio Judicial Center  
65 South Front Street,  
Third Floor  
Columbus, OH 43215

2014 APR 22 PM 3:42

COURT OF CLAIMS  
OF OHIO

**RE: *Ohio Department of Transportation v. E.J. Ward, Inc.***  
***Petition for Removal***

Dear Clerk,

Please file the enclosed *Petition for Removal* and return file-stamped copies via Best Courier. Check No. 408956 in the amount of Twenty-Five Dollars (\$25.00) is enclosed for the filing fee.

Thank you for your assistance with this matter.

Sincerely,

ICE MILLER LLP

*Nicole R. Woods*  
Nicole R. Woods 

NRW/mcg

Enclosures (as stated)