



Purchasing Guidance IV

Purchasing Standard Terms and Conditions

Ohio Department of Transportation

OFFICE OF CONTRACTS - PURCHASING SERVICES

INSTRUCTIONS FOR SUBMITTING QUOTES

1. The quotes with **all pages** must be properly completed, signed, accompanied by copies of all necessary supportive documentation, and returned in its **entirety**.
2. Vendors **MAY REQUEST CLARIFICATION**, if any vendor discovers an inconsistency, error, or omission in this Request for Quote ((hereinafter referred to as "RFQ"), the vendor should request clarification. Any questions or inquiries must be submitted in writing and received no later than three (3) business days before the scheduled opening date. The issuance of an addendum or quote change is dependent upon the information received and the impact on the competitive process.

GENERAL DEFINITIONS

When used in this RFQ or any ensuing contract, the following definitions shall apply. If a conflict exists between these definitions and any definition listed in the specifications, the specifications shall prevail.

1. **DEPARTMENT or ODOT:** Ohio Department of Transportation
2. **AUTHORIZED DISTRIBUTOR:** The vendor who maintains written legal agreements with manufacturers/producers to act as their agent and provide supplies, materials, equipment or services listed in the RFQ/Contract. The authorized distributor must maintain active and sufficient facilities, necessary to perform the awarded contract, own title to the goods inventoried within these facilities and maintain a true stock of these goods on a continuing basis and in sufficient quantity to provide uninterrupted service to ordering agencies.
3. **VENDOR:** The company and/or authorized representative of the company who has signed and is submitting the signed RFQ response and who will be responsible to ensure proper performance of the contract awarded pursuant to the RFQ.
4. **MBE OR EDGE CERTIFIED:** MBE means Minority Business Enterprise and EDGE means Encouraging Diversity, Growth and Equity. The Department of Administrative Services (DAS) has the responsibility for implementing the State of Ohio's minority business set-aside program pursuant to [O.R.C. 125.081](#), and the EDGE program pursuant to O.R.C. 123.152.
5. **EQUIPMENT:** Items, implements and machinery with a predetermined and considerable usage life.
6. **INVOICE:** An itemized listing showing delivery of the commodity or performance of the service described in the order, and the date of the purchase or rendering of the service, or an itemization of the things done, material supplied, or labor furnished, and the sum due pursuant to the contract or obligation.
7. **MATERIALS:** Items or substance of an expendable or non-expendable nature from which something can be made, improved or repaired.
8. **PURCHASE:** To buy, purchase, installment purchase, rent, lease, lease purchase or otherwise acquire equipment, materials, supplies or services. "Purchase" also includes all functions that pertain to obtaining



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of equipment, materials, supplies, or services, including description of requirements, selection, and solicitation of sources, preparation, and award of contracts, and all phases of contract administration.

9. **SERVICES:** The furnishing of labor, time or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.
10. **SPECIFICATION:** Any description of the physical or functional characteristics or of the nature of supplies, equipment, service, or insurance. It may include a description of any requirements for inspecting, testing, or preparing supplies, equipment, services, or insurance.
11. **SUPPLIES:** Provisions and items normally considered expendable or consumable.
12. **PRIME VENDOR:** The vendor who, upon awarding of a contract, becomes the prime vendor who is considered to be the primary source for providing the goods or services listed in the awarded contract and the party to whom payment will be made upon delivery of the goods and/or completion of the contract.
13. **SUBVENDOR:** An individual, firm, or corporation to whom the Vendor sublets part of the contract to be performed.

STANDARD TERMS AND CONDITIONS

1. **HEADINGS:** The headings used in this RFQ 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 RFQ conflict with these terms and conditions, the RFQ standard terms and conditions shall prevail.
2. **GOVERNING LAW:** The RFQ award and the contract entered into with the successful vendor (hereinafter collectively referred to as "the Contract") are governed by the laws of the State of Ohio. To the extent that ODOT is a party to any litigation arising out of, or relating in any way to, this contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
3. **INFORMATION REQUESTED:** Vendors shall furnish all information as requested in the RFQ. At the discretion of the Director, additional information, necessary for evaluation of the quote may be attached to the RFQ and shall be properly identified as being part of the RFQ. ODOT reserves the right to request literature, or other documentation for clarification, although such may not have been set forth in the RFQ. 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.
4. **SAMPLES REQUESTED:** When requested, samples shall be furnished at the Vendors' expense and unless otherwise specified, prior to opening of the RFQs. Samples shall be clearly identified by Vendor's name, the RFQ number, corresponding items in the RFQ and the opening date. ODOT acknowledges that it may receive quotes from multiple vendors and authorized distributors quoting the same manufacturer's products. In such situations, samples may be submitted by manufacturers on behalf of multiple vendors



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or authorized 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 and vendors for whom the samples are provided. Any vendor or authorized distributor 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 RFQ shall not be deemed to vary from any of the provisions, specifications, or terms and conditions of the RFQ. 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 RFQ.

- 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 quotes. 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.

The Department may also use a qualified products list of the Federal government or may develop a qualified products list applicable to ODOT. When developing a qualified products list, the Department shall solicit a sufficient number of suppliers to ensure maximum coverage with providers of the supplies or services. Any supplier, not solicited, may request inclusion on the qualified products list. Potential suppliers will be required to furnish exact samples of the supplies or services to be provided for testing and examination by ODOT. Only those supplies or services that conform to the ODOT's requirements will be considered for inclusion on a qualified products list.

- UNIT PRICE GOVERNS:** The unit price governs the award unless otherwise specified in the RFQ. 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 alter the price after opening of the RFQ shall not be allowed. Vendors should review its pricing carefully, as once a contract is awarded, the Vendor 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.
- QUOTES FIRM:** Once opened, all RFQs are firm and cannot be altered. Once a contract is awarded, the Vendor shall deliver at the prices and terms quoted. The Ohio Department of Transportation shall receive the benefit of any decrease in price during the guaranteed price period. Unless otherwise stated, all RFQs shall remain valid for a period of ten (10) calendar days after the RFQ opening date.
- MODIFICATION OF RFQs:** A Vendor may request to modify their 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 RFQ response, the original information must be lined or redacted with the new information inserted. All



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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 to request written certification from the Vendor verifying that such changes were made by the Vendor and are applicable to the RFQ and any resulting contract. All documents relating to the modification shall be made a part of the RFQ file.

9. **WITHDRAWAL OF RFQS: 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 RFQ response. Such written notice must set forth reasons for the withdrawal. **After opening,** a Vendor may request to withdraw their RFQ response from consideration if the price quoted is substantially lower than the other quotes, providing the RFQ 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 materials, labor, supplies or services in the compilation of the RFQ. Written notice of any such request to withdraw must be sent by fax, email, or certified mail to the requesting ODOT office or district, and received within forty-eight hours after the opening date. All requests to withdraw a RFQ must be placed in writing to the Director of ODOT and no RFQ may be withdrawn without written approval from the Director of ODOT. The decision to allow a RFQ to be withdrawn is at the sole discretion of the Director of ODOT. If the RFQ 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 RFQ file.
10. **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.
11. **REJECTION OF ANY/ALL RFQS:** The Director of ODOT reserves the right to accept, or reject, any or all RFQs in whole or in part, and may determine that any irregularities or deviations from the specifications do not result in the RFQ being non-responsive, provided however, that the Director of ODOT determines that this does not affect the amount of the RFQ or result in a competitive advantage to the Vendor
12. **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 RFQ:
 - A. More than one RFQ for the same work from a parent and subsidiary company, from two or more related subsidiary companies, or an individual, firm, or corporation under the same or different name.
 - B. Evidence of collusion among Vendors.
 - C. Quotes which are in ODOT's opinion unbalanced.
 - D. Evidence that the Vendor has sublet or sub-vended any portion of the work, supplies, services, labor or materials without prior written approval from the Department.

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



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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/>.

13. **CREATION OF THE CONTRACT:** A contract is created between the Vendor and the Ohio Department of Transportation when the Department accepts the quote and an authorized person 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 RFQ as well as the accepted responses in the RFQ, except that no responses may change or alter the terms and conditions of this RFQ.

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

14. **NON-ASSIGNMENT OF INTEREST:** The Vendor shall not assign any interest, duty, or right under the contract, in whole or in part, without prior written approval from the Director of ODOT.
15. **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 RFQ or as listed on the purchase order issued pursuant to any contract awarded. Any shipment marked C.O.D. shall be rejected and returned at the Vendor's expense.
16. **DELIVERY/INSPECTION; ACCEPTANCE,:** 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.
17. **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.
18. **INVOICING & PAYMENT:**

In consideration for Vendor's performance, the Department shall pay Vendor directly at the rate specified in the RFQ. 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. 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



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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.

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 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 Quote.
- 2) Invoice remittance address as designated in the Quote.
- 3) Vendor's federal E.I. number.
- 4) The Purchase Order number authorizing the purchase of goods or services.
- 5) Description, including time period, unit price, quantity, and total price of goods or services delivered or rendered as specified in the Quote.
- 6) 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. Payments for purchases at the contract price are made within three (3) days of the actual sale date with a State of Ohio payment card. If you are able to accept the State of Ohio payment card, your company 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 you have checked that your company is able to accept a credit card.

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. 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.

Payment of Invoices: Pursuant to Section 126.30 of the Revised Code, and the applicable rules thereto, the Department 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



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name and Federal E. I. number awarded the contract and mail to the Vendor address indicated in the quote. No payments shall be made to parent or subsidiary companies. Any changes regarding payment after formation of the contract will not be permitted.

19. CANCELLATION OF CONTRACT:

- A. If any article furnished by a vendor in the performance of a contract or purchase order fails to conform to the specifications and conditions prescribed or to any sample of the article submitted by the vendor, the department may reject the article. Without additional expense to the department, the vendor shall reclaim and remove any rejected article that has been delivered and immediately shall replace all rejected articles with articles that conform to the specifications and conditions or samples. If the vendor does not immediately replace the rejected articles with conforming articles, the department may cancel the contract or purchase order and purchase the article without using a notice and bidding procedure. In an emergency situation as determined by the director, the director immediately may purchase any necessary replacement article. The director may deduct from any moneys due or that may thereafter become due to the vendor who provided the rejected article the difference between the price named in the canceled contract or purchase order with the vendor and the actual cost of the article purchased by the department in substitution for that due from the vendor.
- B. If a vendor fails to make prompt delivery of any article, and the delivery is delayed by circumstances other than fire, strike, freight embargo, or an act of God or a government, the department may cancel the contract or purchase order and purchase the article without using a notice and bidding procedure. The director may deduct from any moneys due or that may thereafter become due to the vendor who failed to promptly deliver the article the difference between the price named in the canceled contract or purchase order with the vendor and the actual cost of the article purchased by the department in substitution for that due from the vendor.
- C. 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 Revised Code incurred by the department in promptly obtaining the conforming articles.
- D. The rights and remedies established in this section are not exclusive and are in addition to any other available rights and remedies.
- E. If the Vendor is the sole authorized distributor of the product, services, labor, or materials in this State or in the area, ODOT reserves the right to notify the manufacturers/ producers of the cancelation of the contract and to request that the manufacturer or producer either directly provide the supplies, materials, equipment or services listed in the RFQ/Contract or provide the name of another authorized distributor with whom the Department may call upon to fulfill the terms of the contract. The authorized distributor must maintain active and sufficient facilities, necessary to perform the awarded contract, own title to the goods inventoried within these facilities and maintain a true stock of these goods on a continuing basis and in sufficient quantity to provide uninterrupted service to ordering agencies.



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20. **TERMINATION:** Any contract awarded as a result of this RFQ 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. The Department may terminate this Contract for the following reasons within the following respective time frames.
- a. **Termination for Default:** When 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 Department will send a Notice of Proposed Default to the Vendor and a Vendor complaint form will be filed by the purchasing agent of the district or office with the Office of Contracts. This notice will clearly state the performance problems that need to be cured and shall be sent certified or express mail. The Vendor shall commence its cure within ten (10) calendar days of the receipt of the notice or within a time frame agreed upon by the parties. If Vendor's default is unable to be cured in a reasonable time, the Department may declare the Vendor to be in default and terminate the Contract by written notice to the Vendor.
 - b. **Termination for Unremedied Default:** If Vendor's default may be cured within a reasonable time, the Department will provide written notice to Vendor specifying the default and the time within which Vendor must correct the default. If Vendor fails to cure the specified default within the time required, the Department may terminate the Contract. If the Department does not give timely notice of default to Vendor, the Department has not waived any of its rights or remedies concerning the default.
 - c. **Termination for Persistent Default:** The Department may terminate this Contract by written notice to Vendor for defaults that are cured, but persistent. "Persistent" means three or more defaults. After the Department has notified the Vendor of its third default, the Department may terminate this Contract without providing Vendor with an opportunity to cure, if Vendor defaults for a fourth time. The four defaults are not required to be related to each other in any way.
 - d. **Termination for Endangered Performance:** The Department may terminate this Contract by written notice to the Vendor if the Department determines that the performance of the Contract is endangered through no fault of the State.
 - e. **Termination for Financial Instability:** The Department may terminate this Contract by written notice to the Vendor if a petition of bankruptcy or similar proceeding has been filed by or against the Vendor.
 - f. **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.
 - g. **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



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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.

- h. **Termination for Convenience:** The Department may terminate this Contract for its convenience after issuing written notice to the Vendor. If the termination is for the convenience of the Department, the Vendor will be entitled to compensation for any Deliverable that the Vendor has delivered before the termination. Such compensation will be the Vendor's exclusive remedy in the case of termination for convenience and will be available to the Vendor only after the Vendor has submitted a prior invoice for such, with the invoice reflecting the amount determined by the Department to be owing to the Vendor.

Termination, Effectiveness, Vendor Responsibilities: The notice of termination whether for cause or without cause will be effective as soon as Vendor receives it. Upon receipt of the notice of termination, Vendor will immediately cease all work, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs that Vendor will incur related to this Contract.

21. **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, estimated time for delivery of all orders received to date, and costs incurred by the Vendor.
22. **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; tornadoes; 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.
23. **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.



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24. **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, if the Ohio General Assembly fails at any time during such contract period to continue funding for any contract awarded as a result of this contract, the Department's obligations under such contract are terminated as of the date that the funding expires without further obligation of the Department.

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.

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 this contract extend beyond June 30, of the current biennium, such contract shall be null and void unless ODOT 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.

25. **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.
26. **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.
27. **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.
28. **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



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information may not have been required by the RFQ. In the event such information is requested, the Department agrees to retain such information as confidential to the extent permitted by law.

29. **DRUG-FREE WORKPLACE:** By virtue of the signature on the last page of this RFQ, 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.
30. **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, or agents while performing tasks, duties, work, or responsibilities as set forth in this Contract.
31. **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.
32. **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.
33. **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.
34. **DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION:** The Vendor being awarded the contract must complete the enclosed Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA). This form is to certify that the Vendor does not provide material assistance to any organization on the United States, Department of State's terrorist exclusion list. The completion of this form is considered a Condition Precedent for Execution of a Contract. Failure to complete the certification may result in the Vendor being deemed not responsive and/or may invalidate any contract awarded. If not submitted with the RFQ response, the Vendor will have seven (7) calendar days, after notification, to submit the completed form.
35. **OHIO ETHICS LAW:** In accordance with Executive Order 2007-01S, the Vendor, by signature on this RFQ, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Vendor understands that failure to comply with Executive Order 2007-01S



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is, in itself, grounds for termination of this Contract and may result in the loss of other contracts with the State of Ohio.

The full text of Executive Order 2007-01S can be downloaded from the ODOT website ([Governors Executive Order 2007-01S Ethics Requirements](http://www.dot.state.oh.us/policy/)) at: <http://www.dot.state.oh.us/policy/>.

36. **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.
37. **OHIO ELECTION LAW:** The Vendor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13. The 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.
38. **ENTIRE AGREEMENT; MODIFICATIONS:** The Agreement and this Addendum supersede all prior agreements, written or oral, between Vendor and ODOT and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and this Addendum and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except by a writing signed by ODOT and Vendor.
39. **CONSTRUCTION:** 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.
40. **PRIOR AGREEMENTS:** 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.
41. **SWEATSHOP FREE CERTIFICATION:** The Vendor certifies that all facilities used for the production of the supplies or performance of services offered in the contract are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers used by the Vendor in furnishing the supplies or services described in this Contract and awarded to the Vendor.
42. **SUBVENDORS NOT PERMITTED:** The Vendor certifies that it will not sub-vend or sublet any portion of the work, labor or supplies provided in the RFQ without prior written approval from the Department. The



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Vendor is further not permitted to sub-vend or subcontract any work, labor or obtain any supplies from any other vendors that provided quotes in this RFQ.

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