

Invitation No.: 012-10
 Location: All Districts
 Commodity: Consignment Contract for Storage Batteries Charged Wet
 Pricing: <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/PurchDocs/012pricing.xls>

INVITATION TO BID

STATE OF OHIO
 DEPARTMENT OF TRANSPORTATION
 Office of Contracts, Purchasing Services
 JOLENE M. MOLITORIS, Director

Opening Date: 9/1/2009
 Time: 11:00 A.M.

DO NOT SUBMIT MORE THAN ONE BID PROPOSAL FOR EACH BID

NAME AND ADDRESS INFORMATION MUST APPEAR BELOW

Submitted by:

Company Name: _____

Federal Tax ID No.: _____

Correspondence Address Information	Remit to Payment Address Information
Street Address:	
P.O. Box:	
City:	
St:	
Zip:	
E-Mail Address:	

Telephone Number	800 Number	Fax Number

Purchasing Coordinator: Jim Schurch
E-Mail Address: jim.schurch@dot.state.oh.us
Telephone: (614) 644-7870 or (800) 459-3778

Visit our web site at: <http://www.dot.state.oh.us/Divisions/ContractAdmin/Pages/default.aspx> Select Purchasing Contracts, Upcoming ITBs

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ITB 012 - REQUIREMENTS/SPECIFICATIONS 7/27/09

Section 1: Intent

It is the intent of the Ohio Department of Transportation (ODOT) to establish a cost efficient and environmentally friendly consignment battery program. The areas of the most concern for ODOT include: new battery delivery, scrap battery removal and battery inventory obsolescence. The awarded vendor must be able to provide all the above-referenced services.

Section 2: Contract Duration

The duration of the contract shall be for twenty-four (24) months from the date of award.

Section 3: Free on Board (F.O.B.) Destination

The net unit bid price shall include delivery charges, Free on Board (F.O.B.) to any of ODOT's twelve (12) Districts and eighty-eight (88) county destination locations in the State of Ohio, as per the enclosed map: **NOTE:** Purchase orders when issued, will detail specific destination points.

District 1 - Lima	District 7- Sidney
District 2 - Bowling Green	District 8 - Lebanon
District 3 - Ashland	District 9 - Chillicothe
District 4 - Akron	District 10 - Marietta
District 5 - Jacksontown	District 11 - New Philadelphia
District 6 - Delaware	District 12 - Garfield Heights
Central Garage - Columbus (CG)	

Section 4: Delivery

Delivery shall be made within 1 calendar day upon written or verbal notification of a valid State of Ohio purchase order.

4.1: Delivery Hours

All deliveries shall be made between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, excluding State holidays, unless special permission is granted by the Department to temporarily waive or adjust this requirement.

Section 5: F.O.B. Destination Minimum Delivery Order: \$50.00 Invoice

- Orders meeting or exceeding the minimum shall be shipped FOB destination at the unit price quoted.
- Orders amounting to less than the minimum shall be shipped at the unit price quoted, prepaid with freight/shipping charges added to the invoice. Copies of freight and shipping charges are to be included with the invoice.
- No minimum shall apply to an order picked up by the Department of Transportation at the vendor location, at the unit price quoted.

Section 6: Product Specifications

- **Consigned Sales:** The awarded vendor must enter into a consignment agreement as stated in the standard terms and conditions to stock merchandise at selected locations within ODOT facilities for the mutual benefit of both parties. Ownership/title of the merchandise remains with the vendor and does not pass to ODOT until the merchandise is withdrawn from the consigned stock. Nothing in this agreement is intended to relieve the vendor of its rights and/or responsibilities set forth in the Invitation to Bid (ITB) terms and conditions. In the event that this agreement conflicts with the ITB's standard terms and conditions, the ITB's standard terms and conditions shall control.
- **Stock Levels:** The vendor is responsible for stocking sufficient quantities of batteries to handle normal ODOT requirements. Punch out warranty tags must be permanently affixed to the top of each battery.
- **Stock Rotation:** The vendor must rotate the stock inventory on a first in/first out basis. Batteries which have a voltage of below 12.4 volts and will not accept a charge must be replaced.
- **On Time Delivery:** Batteries which are required by ODOT, but not maintained as normal stock will be delivered within twenty-four (24) hours after the order is received by the vendor.
- **Scrap Battery Disposal:** The vendor shall agree to accept any excess automotive type battery which ODOT has determined is unusable. The vendor shall state on the Scrap Batteries page of the Microsoft Excel Pricing Page, the price the vendor will pay for the scrap car batteries and the price the vendor will pay for the scrap truck batteries.

Section 7: Insurance

All bidders are required to include a certificate of insurance with their bid. The insurance must cover all items held in consignment.

Section 8: Warranty

All batteries purchased under this contract must have an unconditional six (6) month warranty, and then be prorated for the remainder of the contract. The warranty shall start when the battery is used and paid for by ODOT.

The only exception to this warranty requirement is misuse or abuse by ODOT.

Section 9: Testing

Tests may be made at the expense of the Ohio Department of Transportation either in the manufacturer's plant, or in a laboratory that are both acceptable to the Ohio Department of Transportation. The Ohio Department of Transportation reserves the right, on appropriate notification, to have its inspecting agency draw the samples and witness the laboratory test. The Ohio Department of Transportation also reserves the right to test the batteries at any time at its own expense.

Section 10: Price Lists

A cd containing a pdf file of the price list(s) for additional batteries must be included with the submission of your bid. **Your bid will be considered non-responsive if the price list(s) is not included.**

Section 11: Price Increase

All prices submitted must be firm and guaranteed against increase during the first twelve (12) months of the bid. Twelve (12) months from the date of the award, the awarded vendor may submit a written request to increase prices. This written request must include an updated manufacturer's price list. The percentage of discount must remain the same. The Department of Transportation is to receive the benefit of any decrease in price during the guaranteed pricing period.

Section 12: Award

Award will be made to the lowest bidder for items 1 through 10 on the pricing page. Failure to bid on all ten items will be justification to consider the bid non-responsive.

Hazardous Material Certifications

Each Bidder shall be required to furnish certification (with his Bid) to the Ohio Department of Transportation that he is in compliance with the following Government Requirements.

- A. U.S. Department of Transportation Hazardous Material Transportation Registration and Fee Assessment Program. The requirements of which are found in Title 49, Code of Federal Regulations (49, CFR), Part 107, Subpart G, Sections 601-620.

I hereby certify that _____
(Bidder's Name)

has registered and paid the annual fee regarding Item "A" above. Our Certificate of Registration Number is:

Bidder's Authorized Signature: _____

- A. (SARA III) Superfund Amendments & Reauthorization Act
(EPCRA) Emergency Planning & Community Right-To-Know Act
(SERC) State Emergency Response Commission (Ohio Senate Bill 367)

I hereby certify that _____ has filed the annual Facility
(Bidder's Name)

Chemical and paid the filing fee regarding Item "B" above.

Bidder's Authorized Signature: _____

- C. Hazardous Materials Carrier Registration (PUCO), Ohio Revised Code, Section: 4905.80 and Ohio Administrative Code 4301:2-6.

I hereby certify that _____ has registered with the
(Bidder's Name)

Public Utilities Commission of Ohio and paid the Registration Fee regarding Item "C" above.

Bidder's Authorized Signature: _____

Any Bidder, claiming exemption status from any of the requirements listed above, shall indicate below by giving a full explanation:

Please State Your Vendor EPA Number If Not Shown Above: _____

Pricing

Department Price Sheet Must be Submitted on a CD

The Department shall not accept any Invitation to Bid that fails to include a compact disk (CD) with a completed price sheet from the Department's provided Microsoft Excel file. The Department will only accept and consider a price sheet that has been produced from the electronic completion of the Department's Microsoft Excel file which must be saved and submitted on a CD with the bid. Failure to submit a CD with a completed price sheet from the Department's Microsoft Excel file shall make the bid non-responsive. The CD shall be marked with the bidder's name and the Invitation to Bid number. The link for the price sheet from the Department's Microsoft Excel file is indicated on the front cover of this bid.

A hard copy print out of the completed price sheet should also be included in the bid package. In the event there is a discrepancy between the information submitted on the CD and the hard copy price sheet submitted with the bid, the information on the CD will govern.

**OFFICE OF CONTRACTS
PURCHASING SERVICES**

INSTRUCTIONS FOR SUBMITTING BIDS

1. The original bid response must be submitted in a sealed envelope (envelope means any type of sealed, opaque container) with the bid number clearly marked on the outside of the envelope. If bidder is using an "Express Mail" or similar type of service, the bid response must be contained in a sealed envelope within the "Express" mailer (the bid number must be listed on the exterior of the sealed envelope contained within the "Express" mailer). Failure to submit the bid in a sealed envelope without the bid number clearly marked on the exterior shall result in immediate disqualification and no further consideration given for the award.
2. The original bid response (unless otherwise stated, hereinafter referred to as "bid") must be submitted to ODOT Purchasing prior to 11:00 a.m., on the scheduled day of opening as listed on the Invitation to Bid (ITB). All bids will be time/date stamped upon receipt by ODOT Purchasing, and such shall be the official time/date of receipt. Postmarks, or other times/dates appearing will not be considered as the official time/date of receipt. Bids may be submitted or delivered to ODOT Office of Contracts, Purchasing Services section - 1st floor, 1980 W. Broad Street, Columbus, Ohio 43223. Delivery to any other location, does not constitute bid being received by ODOT Purchasing. Bids submitted with insufficient postage will not be accepted. Bids will be received during regular business hours, 7:00 a.m. - 4:30 p.m., Monday through Friday, excluding recognized holidays. **Bids with stamped or copied signatures will be considered non-responsive.** Telegraphic, facsimiles, or any other mode of transmission other than stated above shall not be considered as a valid submission to ODOT Purchasing. Bidders using "express mail" or similar types of service, should verify with the service as to which address is required to ensure proper delivery of the response to ODOT Purchasing. ODOT will not be held liable for non-delivery and/or late delivery of any bid response due to a bidder listing an incorrect address.
3. The original bid response **with all pages** must be properly completed, signed by the bidder, accompanied by copies of all necessary supportive documentation **and returned in its entirety**. The original bid response must contain an authorized original signature of the bidder on the signature page. **If the entire ITB is not submitted with all pages, the bid will be deemed non responsive and ineligible for award.**
4. Any bid received after 11:00 a.m., on the scheduled day of opening, will be marked as late, remain sealed, and will receive no further consideration for award. Late bids will be returned to the Vendor. Bidders should allow sufficient time for mailing their bids to ensure delivery to ODOT Purchasing prior to the opening time and date. ODOT will not be responsible for a late bid due to failure of the bidder to allow sufficient time for delivery of the bid.
5. In order to protect the integrity of the bidding process, bids shall not be prepared, completed or altered on the premises of ODOT Purchasing. Any bid which is prepared, completed or altered on the premises of ODOT Purchasing shall be immediately disqualified and receive no further consideration for award.
6. Pursuant to Section 5513.01 of the Ohio Revised Code, ODOT Purchasing is required to mail ITBs to Vendors properly registered with ODOT. A copy of the ITB may be obtained by visiting the Office of Contracts during regular business hours. Vendors who wish to become registered to receive ITBs by mail, should contact Purchasing Services Section at (614) 466-3778 or 800-459-3778 for further information.

In addition, your company now has the ability to access ITB's and addenda at <http://www.dot.state.oh.us>. Go to Divisions – Contract Administration – Purchasing Services – Vendor Information – Upcoming Invitations to Bid.

7. Bids shall be publicly opened, at ODOT, starting at 11:00 a.m. on the scheduled date of opening. All bids will be opened and read. Bids, unless otherwise provided herein, are subject to the Public Records Law, Section 149.43 of the Ohio Revised Code. Copies of bid responses must be requested and will be provided within a reasonable period of time and at a fee established by the Director of ODOT. To expedite and properly respond to such public records requests, a written request should be submitted. To prevent delays in evaluating bids and awarding contracts, such requests for recently opened bids, will be honored upon completion of the contract award by the Director of ODOT.

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8. BIDDERS MAY REQUEST CLARIFICATION: If any bidder discovers an inconsistency, error, or omission in this ITB, the bidder should request clarification. Any pre-bid 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 is dependent upon the information received and the impact on the competitive bid process. Pre-bid questions can be sent e-mailed or faxed to the buyer listed on the front page. The Office of Contracts fax number is 614-728-2078. All pre-bid inquiries must have the following information:

The name of sender,
Company name,
Phone number,
Opening date,
Bid number,
A detailed description of the question,
Any other pertinent information

Bidders are not to contact any other office, including District offices, for responses to pre-bid questions.

GENERAL DEFINITIONS

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

1. AGENCY: Ohio Department of Transportation.
2. AUTHORIZED DISTRIBUTOR: The bidder/vendor who maintains written legal agreements with manufacturers/producers to act as their agent and provide supplies, materials, equipment or services listed in the bid/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. BIDDER: The company and/or authorized representative of the company who has signed and is submitting the signed bid response and who will be responsible to ensure proper performance of the contract awarded pursuant to the bid.
4. EDGE CERTIFIED: EDGE stands for Encouraging Diversity, Growth and Equity. EDGE is an innovative program to serve socially and economically disadvantaged businesses in Ohio. Reference Ohio Revised Code 123.152. Please visit <http://www.ohio.gov> for additional information.
5. EQUIPMENT: Items, implements and machinery with a predetermined and considerable usage life.
6. INVITATION TO BID/CONTRACT: All documents, whether attached or incorporated by reference, utilized for soliciting bids. Upon completion of the evaluation of the bidder's response, the Invitation to Bid then becomes the contract between ODOT and the successful bidder, both governed by the laws of the State of Ohio.
7. 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.
8. LOWEST RESPONSIVE\RESPONSIBLE BIDDER: A bidder who offers the lowest cost for the goods or services listed in the bid; and whose proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give him a competitive advantage; and whose experience, financial condition, conduct and performance on previous contracts, facilities, management skills evidences their ability to execute the contract properly.
9. MATERIALS: Items or substance of an expendable or non expendable nature from which something can be made, improved or repaired.
10. 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 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.
11. 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.
12. 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.
13. SUPPLIES: Provisions and items normally considered expendable or consumable.

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14. UNBALANCED: Any unit price contained in the bid schedule which is obviously unbalanced either above or below reasonable cost analysis and or unreasonably disproportionate to current market prices as determined by the Director of ODOT, or if such unbalanced prices are contrary to the interest of the department.
15. VENDOR: The bidder 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.
16. 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 Invitation to Bid (hereinafter referred to as an "ITB") 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 ITB conflict with these terms and conditions, the ITB standard terms and conditions shall prevail.
2. GOVERNING LAW/SEVERABILITY: The ITB, award and the agreement entered into with the successful bidder (hereinafter referred to as "the Contract") are governed by the laws of the State of Ohio. If any provision of this Contract, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Contract, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
3. INFORMATION REQUESTED: Bidders shall furnish all information as requested in the ITB. At the discretion of the Director, additional information, necessary for evaluation of the bid, may be attached to the bid and shall be properly identified as being part of the bid. ODOT reserves the right to request literature, or other documentation for clarification, although such may not have been set forth in the ITB. 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 bid invalid.
4. SAMPLES REQUESTED: When requested, samples shall be furnished at bidders' expense, and unless otherwise specified, prior to opening of the bid. Samples shall be clearly identified by bidder's name, the bid number, corresponding item in the bid and bid opening date. ODOT acknowledges that it may receive bids from multiple distributors bidding the same manufacturer's products. In such situations, samples may be submitted by manufacturers on behalf of multiple distributors, provided that such samples shall be accompanied by written documentation, on manufacturer's letterhead, signed by authorized representative of manufacturer, listing the named distributors for whom the samples are provided. Any bidder not appearing on this listing and who has failed to furnish requested samples shall be considered non-responsive. Unless otherwise stated, any sample submitted with the bid shall not be deemed to vary from any of the provisions, specifications, or terms and conditions of the bid. When requested in writing, samples not destroyed in testing, shall be returned at the bidder's expense. Samples not so requested shall become the property of ODOT. Unsolicited samples which are submitted, shall be at the bidder'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 ITB.
5. 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 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 ODOT's requirements will be considered for inclusion on a qualified products list.

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Specifications as shown in the Construction and Materials Handbook are incorporated into the ITB and made a part thereof and are found in the current Ohio Department of Transportation Construction and Materials Specifications handbook and provisions of the current version of supplemental specification 800 that is in force at the time of award. To obtain the current specifications, contact:

Ohio Department of Transportation
Office of Contracts, Purchasing Services
1980 W. Broad Street, 1st Floor
Columbus, Ohio 43223
Telephone (614) 466-3778 or (800) 459-3778

The cost of the handbook is \$12.00. You can access Supplemental Specification 800 on ODOT's Web Site at: <http://www.dot.state.oh.us/drrc/>.

6. UNIT PRICE GOVERNS: The unit price governs the award unless otherwise specified in the ITB. The unit price must be entered for each item being bid. 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 bid shall not be allowed. Bidders should review bid pricing carefully, as once a contract is awarded; the Vendor shall be required to deliver the goods or services at the prices quoted. Bidders 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 bid or payment thereof.
7. BIDS FIRM: Once opened, all bids 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 bids shall remain valid for a period of sixty (60) calendar days after the bid opening date.
8. MODIFICATION OF BIDS: A bidder may request to modify their bid response prior to the scheduled date and time set for bid opening. If changes or alterations are made to the bid response, the original information must be lined or opaqued out with the new information inserted. All changes, corrections, or alterations must be legible and initialed by the bidder. Illegible modifications shall result in disqualification of the items. Failure of the bidder 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 bidder verifying that such changes were made by the bidder and are applicable to the ITB and any resulting contract. All documents relating to the modification shall be made a part of the bid file.
9. WITHDRAWAL OF BIDS: **Prior to the scheduled time and date for opening:** A bidder may, by written notice to the Director of ODOT, request to withdraw their bid response. Such written notice must set forth reasons for the withdrawal. **After bid opening,** a bidder may request to withdraw their bid response from consideration if the price bid is substantially lower than the other bids, providing the bid was submitted in good faith, and the reason for the bid price being substantially lower was due to an unintentional and substantial arithmetical error or unintentional omission of a substantial quantity of material or labor in the compilation of the bid. Written notice of any such request to withdraw must be sent by fax, email, or certified mail, and received within forty-eight hours after the bid opening date. All requests to withdraw a bid must be placed in writing to the Director of ODOT and no bid may be withdrawn without written approval from the Director of ODOT. The decision to allow a bid to be withdrawn is at the sole discretion of the Director of ODOT. If the bid 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 bid file. Pursuant to Ohio Revised Code Section 5525.01, the Director may declare forfeited any bid bond associated with a bid if the terms of this paragraph are not met.
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 BIDS: The Director of ODOT reserves the right to accept, or reject, any or all bids, in whole or in part, and may determine that any irregularities or deviations from the specifications do not result in the bid being non-responsive, provided however, that the Director of ODOT determines that this does not affect the amount of the bid or result in a competitive advantage to the bidder.

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12. **MULTIPLE AWARD:** The Contract shall be awarded to all responsive bidders who meet or exceed the requirements specified in the ITB, pursuant with Section 5513.01 and 5513.02 of the Ohio Revised Code. Bid evaluation and awards are subject to the domestic preference provisions of 41 U.S.C.A. 10a -10d (Buy America), and Sections 125.09 and 125.11 of the Ohio Revised Code (Buy Ohio), and any rules promulgated by the Department of Administrative Services as adopted by ODOT. Unless otherwise stated, the Contract may be awarded, at the sole discretion of the Director of ODOT, as a whole or in part, by item, county or ODOT Geographic District. Bidders may offer cash discounts for prompt payment of invoices, however, such discounts will not be used in determining the final net prices offered. ODOT may take advantage of such discounts, if offered. The Director of ODOT shall award Contracts within a reasonable period of time after the bid opening. **ODOT reserves the right to extend all term contracts 30 days beyond the contract expiration date without notice. ODOT further reserves the right to extend 30 additional days by addendum, with notice and written acceptance from the bidder.**
- 12A. **DISQUALIFICATION OF BIDDERS:** Any of the following reasons may be considered as being sufficient for the disqualifications of a bidder and the rejection of their proposal:
- A. More than one proposal for the same work from an individual, firm or corporation under the same or different name.
 - B. Evidence of collusion among bidders.
 - C. Bid prices which are in ODOT's opinion unbalanced.

The bid supplied by a disqualified bidder shall be rejected, and the disqualification determination will be used to evaluate the responsibility of the bidder in future ITBs.

The Department will not award a contract for goods or services, funded in whole or in party 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 Director of Transportation accepts the competitive bid and acknowledges the acceptance in writing. The contract shall become operational only when either a purchase order has been issued or the Department's payment card is presented to the awarded Vendor. The contract shall contain all the terms and conditions of this ITB, as well as the accepted responses in the bid proposal, except that no responses may change or alter the terms and conditions of this ITB.

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

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. **PURCHASE ORDER/PAYMENT CARD REQUIRED:** The ODOT 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. An official ODOT purchase order must contain approval signatures of the Office of Budget and Management, the Department of Administrative Services, and the Director of Transportation. The approved purchase order shall authorize the Vendor to provide goods or services listed on the order and will obligate ODOT to pay for such goods or services upon completion of delivery or performance of service by the Vendor. Any order placed, not using an approved ODOT purchase order or payment card, shall not be considered a valid order and may result in denial of payment and/or return of goods at the Vendor's expense.

Note: Payments for purchases at the contract price 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.

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16. DELIVERY/FREIGHT CHARGES: Unless otherwise stated, ODOT 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 ITB 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.
17. DELIVERY/INSPECTION, ACCEPTANCE AND AMENDMENTS: Upon delivery of the product/service, ODOT 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, ODOT shall notify the Vendor for removal/replacement of the product or service. ODOT shall retain all rights and remedies as described herein. Wherein products ordered by ODOT are delivered to a facility, which is not owned by ODOT and where ODOT has contracted with this facility to take delivery of products ordered by ODOT, acceptance will occur when the products have been inspected and accepted by ODOT within a reasonable amount of time after delivery to the facility. ODOT shall not be responsible for any storage costs incurred prior to the inspection and acceptance.

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

18. DELIVERY/TITLE TO THE MERCHANDISE: Title to the product(s) passes to ODOT upon inspection and acceptance. ODOT shall approve and process payment for the product(s) upon passing of the title.
19. CONTRACT REMEDIES:
- A. ACTUAL DAMAGES: Vendor is liable to the State of Ohio for all actual and direct damages caused by Vendor's default. The State may substitute supplies or services, from a third party, for those that were to be provided by Vendor. In accordance with Ohio Revised Code §5513.05(c), the State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Vendor's default, from Vendor.
 - B. LIQUIDATED DAMAGES: If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default for every day that the default is not cured by the Vendor. If Delay of the cure is caused by ODOT, the delivery date shall be extended accordingly to offset such delays. Approval to extend any scheduled delivery date shall be at the sole discretion of ODOT.
 - C. DEDUCTION OF DAMAGES FROM CONTRACT PRICE: The State may deduct all or any part of the damages resulting from Vendor's default from any part of the price still due on the contract, upon prior written notice issued to the Vendor by the State.

20. INVOICING & PAYMENT:

- A. In consideration for Vendor's performance, ODOT shall pay Vendor directly at the rate specified in the Bid. 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 ODOT.

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 ODOT's receipt of goods or services, in quadruplicate, directly to the ordering agency billing office as indicated on the purchase order. A proper invoice is defined as being free from defects, discrepancies, errors or other improprieties and shall include, but may not be limited to:

- 1) Vendor's name and address as designated in the Quote.
- 2) Vendor's federal E.I. number.
- 3) Invoice remittance address as designated in the Quote.
- 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.

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- 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: ODOT 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 service 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 ODOT.

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

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21. BREACH OF CONTRACT:

- A. 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 Vendor will be declared to be in breach of contract. A Vendor complaint form will be filed by the district with the Office of Contracts, Purchasing Services.
- B. The Vendor shall be given a written notice of its breach of contract by the Department. This notice will clearly state the performance problems that need to be cured. The notice will be sent certified or express mail.
- C. The Vendor shall commence its cure within **ten (10) calendar days** or within a time frame agreed upon by the parties or risk being defaulted. If the performance problems have not been cured or good faith efforts have not been made within either the **ten (10) calendar day period or another agreed upon time frame**, the Director may declare the Vendor in default.
- D. Pursuant to Section 5513.05 of the Ohio Revised Code the Department may recover from a Vendor who fails to promptly provide conforming articles, any incidental or consequential damages as defined in Section 1302.89 of the Ohio Revised Code incurred by the Department in promptly obtaining the conforming articles.

22. TERMINATION FOR CAUSE - DEFAULT

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

23. FORCE MAJEURE: Except as otherwise provided herein, neither the Vendor nor ODOT 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.

24. 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.

25. **NON-APPROPRIATION OF FUNDS:** It is understood that ODOT'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, ODOT represents: that it has adequate funds to meet its obligations under any Contract awarded as a result of this ITB during the current fiscal year; that it intends to maintain any Contract awarded as a result of this ITB 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 ITB, ODOT's obligations under such Contract are terminated as of the date that the funding expires without further obligation of ODOT.

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

Article II, Section 22, of the Constitution of the State of Ohio prohibits the current General Assembly from committing a future General Assembly to an expenditure. In addition, no state contract may extend beyond June 30 of the current biennium. Should the effective date of any state contract extend beyond June 30, of the current biennium, such contract shall be null and void unless the state affirmatively renews the contract through issuance of a valid ODOT Purchase Order or by actions of ODOT of the decision to renew. A biennium will expire on June 30 of an odd numbered calendar year. (For example, the 94/95 biennium expires on June 30, 1995.).

26. **ANTITRUST:** ODOT 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 ODOT 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 ODOT. 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 ODOT.
27. **TERMINATION OR SUSPENSION:** Any contract awarded as a result of this proposal may be terminated by either party after the expiration of sixty (60) days from the effective date of the contract by giving thirty (30) days prior written notice of intent to cancel to the other party. However, in the event that services/materials supplied by the Vendor do not comply with the terms/specifications in this invitation, the Department of Transportation reserves the right to cancel this contract immediately. Notwithstanding the above, the Department further reserves the right to cancel this contract for the following reasons within the following respective time frames.
- A. **TERMINATION FOR FINANCIAL INSTABILITY:** ODOT may cancel this contract immediately by written notice to the Vendor if a petition in bankruptcy or similar proceeding has been filed by or against the Vendor.
- B. **CANCELLATION:** Any contract awarded in error may be rescinded at the Directors discretion. If cancellation is for the convenience of ODOT, the Vendor will be entitled to compensation for any deliverable that the Vendor has delivered before the cancelation. Such compensation will be the Vendor's exclusive remedy and provided only after a proper invoice is submitted and approved by ODOT.
- C. **TERMINATION FOR DELINQUENCY, VIOLATION OF LAW:** The State 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 State also may cancel this Contract, if it determines that Vendor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Vendor has entered into a repayment agreement with which the Vendor is current.

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- D. **TERMINATION FOR SUBCONTRACTOR DEFAULT:** The State may terminate this Contract for the default of the Vendor or any of its subcontractors. The Vendor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Vendor for any compensation to which they may be entitled.
- E. **TERMINATION FOR FAILURE TO RETAIN CERTIFICATION:** Pursuant to section 125.081 of the Revised Code, the State may set aside a quote for supplies or services for participation only by minority enterprises (MBE's) as certified by the State of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Vendor to maintain certification as a MBE. If the Vendor fails to renew its certification and/or is de-certified by the State of Ohio, Equal Opportunity Coordinator, the State may immediately cancel the Contract.
- F. **SUSPENSION:** If Vendor fails to perform any one of its obligations under this Contract, it will be in default and ODOT may suspend rather than terminate this Contract with ODOT believes that doing so would better serve its interests.

In the case of a suspension for ODOT'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 ODOT's convenience or the Vendor may be entitled to compensation for work performed before the suspension, less any damage to ODOT 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 ODOT which will include a detailed description of work completed, percentage of project completion, estimated time for delivery of all orders received to date, and costs incurred by the Vendor.

28. **INDEMNIFICATION:** The Vendor shall defend, indemnify and hold harmless ODOT 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. Reference 107.12 the Construction & Materials Specification handbook.
29. **CONFIDENTIALITY:** The Vendor acknowledges that some of the information, documents, data, records, or other material provided by ODOT 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.
30. **CONFIDENTIAL DATA:** ODOT reserves the right to request additional confidential information, including but not limited to financial information, to be used for evaluation purposes even though such information may not have been required by the ITB. In the event such information is requested, ODOT agrees to retain such information as confidential to the extent permitted by law.
31. **DRUG-FREE WORKPLACE:** By virtue of the signature on the last page of this ITB, the bidder 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.
32. **PATENTS:** Section 107.03 concerning patented devices, materials and processes, as stated in the Ohio Department of Transportation Construction and Materials Specifications current issue, is incorporated by reference, as if rewritten herein for this Invitation to Bid. A copy of Section 107.03 is available upon request.

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33. **WORKERS' COMPENSATION:** Vendor shall be in compliance with all State and Federal laws pertaining to the type of service requested, such as Workers' Compensation. ODOT is hereby released from any and all liability for injury received by the Vendor, its employees, agents, or subcontractors, while performing tasks, duties, work, or responsibilities as set forth in this contract.
34. **PROTEST PROCEDURE:**
- Pursuant to Ohio Revised Code Section 9.312, an apparent low bidder found not to be responsive or responsible shall be notified of that finding and the reasons for it. The notification shall be given in writing and by certified mail.
 - Bidder shall have five (5) calendar days after receipt of notification to file a written protest. The Department shall meet with the apparent low bidder or bidders at their option upon the filing of a timely written protest.
 - No final award shall be made until the Department either affirms or reverses its earlier determination.
35. **TIE BID PROCESS:** If two or more bids offer the same unit price and are determined to be responsive and responsible, ODOT will break the tie as follows: during the bid evaluation process, the bidders that submitted tie bids 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, ODOT 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 bid situation to otherwise unnecessarily delay a potential award.
36. **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 bid non-responsive if the Director determines that the deviation or modification affects the amount of the bid or results in a competitive advantage for the bidder.
37. **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.
38. **DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION:** The Bidder 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 bidder being deemed not responsive and/or may invalidate any Contract awarded. If not submitted with the bid response, the bidder will have seven (7) calendar days, after notification, to submit the completed form.
39. **OHIO ETHICS LAW:** In accordance with Executive Order 2007-01S, the Vendor, by signature on this Invitation to Bid, 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 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/>.

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40. CERTIFICATE FOR DOMESTIC AND OHIO PREFERENCE FORM: Those Bidders 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. Bidders who qualify as an "Ohio" Bidder (offer an Ohio product or who have significant Ohio economic presence) or who qualify as a Border State Bidder are eligible to receive a five percent (5%) preference over non-Ohio/Border state bidders. The state reserves the right to clarify any information during the evaluation process. Bidders must complete this certification to receive the preference.
41. POLITICAL CONTRIBUTIONS: The Vendor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of the Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of the Ohio Revised Code Section 3517.13. The Vendor understands that knowingly making false statement with regard to the aforementioned certification is, in itself, grounds for the rescission of this contract and may result in the loss of other contracts with the State of Ohio.
42. CONSIGNMENT: The products requested in this ITB may be considered for consignment by mutual acceptance of the parties. The parties, meaning any ODOT facility identified in the ITB and the awarded Vendor (s).

If a consignment arrangement is mutually acceptable to both parties, ODOT will send the awarded Vendor (s) a "Consignment Agreement" which may be executed by the Vendor (s). If the Vendor (s) decides to execute the "Consignment Agreement," it must be submitted to the Office of Contracts. The Office of Contracts will execute the "Consignment Agreement" of behalf of the Department and send a copy of the executed agreement to all the parties.

If a "Consignment Agreement" is established, the prices established in the ITB must remain firm for the duration of the contract. The prices can not and will not be increased to cover any increased costs associated with entering into a "Consignment Agreement" with the Department.

43. Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.
44. 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.
45. 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.
46. SWEATSHOP FREE CERTIFICATION: The Vendor certifies that all facilities used for the production of the supplies or performance of services offered in the bid are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by the Vendor in furnishing the supplies or services described in this Contract and awarded to the Vendor.

To Be Referenced on the Salt Contract Only

47. 018 – SALT CONTRACT ONLY - 19. LATE DELIVERY CHARGE: The Vendor shall be responsible for any and all damages for noncompliance with the delivery schedules set forth in the ITB or any awarded contract. The Vendor shall be required to make delivery of the product or service in accordance with the terms of the contract. Unless prior approval to extend the delivery date has been granted to the Vendor, by the ordering agency, any failure to meet the scheduled delivery date may result in the Vendor being assessed a "late delivery charge." Said late delivery charge shall be either 1% of the value of the Sub-Purchase Order or \$50, whichever is greater, for each calendar day beyond the scheduled 7 calendar day delivery date. The Sub-Purchase Order shall be defined as that remaining portion of the Purchase Order that was not delivered on the scheduled delivery date. As time is of the essence, if the Vendor does not deliver the ordered material within 7 days and ODOT is required to move material from one facility to another to meet operational need, the Vendor will be assessed an addition \$5.00 per ton for each ton transported. If such delay is caused by ODOT, the delivery date shall be extended accordingly to offset such delays. Approval to extend any scheduled delivery date shall be at the sole discretion of ODOT. Continued failure to meet scheduled delivery dates may result in the Vendor being found to be in default.
48. 018 – SALT CONTRACT ONLY - FORCE MAJEURE: Neither party shall be liable to the other for any delay or failure of performance, nor shall any such delay or failure constitute a default, where an event of such catastrophic significance, that could not be foreseen in the exercise of ordinary care and which is beyond the reasonable control of the affected party, prohibits the mining or delivering of salt. The Director reserves the discretion to pay the Vendor for unforeseen and unforeseeable events as the Director deems appropriate under the respective circumstances at an amount the Director determines to be reasonable.

**NOTICE TO VENDORS
ODOT COOPERATIVE PURCHASING PROGRAM**

In accordance with Ohio Revised Code Section 5513.01 (B), the Director of Transportation may permit any political subdivision to participate in selected contracts into which the Ohio Department of Transportation has entered for the purchase of certain machinery, materials, supplies or other articles.

The Ohio Department of Transportation may permit political subdivisions in Ohio to participate in this term contract. Section 5513.01 (B) defines "political subdivision" as any County, Township, Municipal Corporation, Conservancy District, Township Park District, Park Districts created under Chapter 1545 of the Revised Code, Port Authority, Regional Transit Authority, Regional Airport Authority, Regional Water and Sewer District, County Transit Board and State University or College as in Division (A)(1) of Section 3345.32 of the Revised Code, County Boards of Mental Retardation and Developmentally Disabled (MR/DD), the Ohio Turnpike Commission, and other agencies of the state as appropriate and by agreement; collectively "governmental entities." Therefore, vendors may receive purchase orders from these political subdivisions to participate in a contract awarded pursuant to this Invitation for Bid.

The Office of Contracts shall notify the successful vendor, under this contract, of the name of the political subdivision or other governmental entity that has been authorized by the Director of Transportation to participate in this contract. The responsibilities and obligations of the Ohio Department of Transportation shall cease at this point.

The vendors shall then deal directly with the political subdivision or governmental entity that has been authorized to participate in this contract. All orders placed by a political subdivision shall then be filled in accordance with the terms and conditions of that particular contract.

All invoices for such purchases shall be sent directly by the vendor to the political subdivision's or governmental entity's billing address. Invoices for these political subdivisions or governmental entities which are sent to the State of Ohio will be returned to the vendor.

All purchases made under the ODOT Cooperative Purchasing Program and Section 5513.01 (B) are the responsibility of the political subdivision or governmental entity and the vendor. The political subdivision or governmental entity must agree, to the extent allowed by law, to release and forever discharge the Director of Transportation and the Ohio Department of Transportation from all such claims, actions, expenses, or other damages arising out of its participation in the cooperative purchasing program which the political subdivision or governmental entity may have or claim to have against ODOT or its employees, unless such liability is the result of negligence on the part of ODOT or its employees.

Purchases made from this contract can only be made from the awarded vendor.

STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

**CERTIFICATE FOR DOMESTIC AND OHIO PREFERENCE FORM
BUY AMERICA & BUY OHIO**

Those bidders claiming preference for Domestic Source End Products and/or the Ohio preference, pursuant to Revised Code Section 125.09 and 125.11 and Administrative Code Section 123:5-1-06 must complete the following information. Bidders who qualify as an "Ohio" bidder (offer an Ohio product or have significant Ohio economic presence) or who qualify as a Border State bidder are eligible to receive a five percent (5%) preference over non-Ohio/Border state bidders. The state reserves the right to clarify any information during the evaluation process. BIDDERS MUST COMPLETE THIS CERTIFICATION TO RECEIVE THE PREFERENCE.

1. Buy America, Domestic Preference
 - a. The product/service being offered are mined, raised, grown, produced or manufactured in one of the following countries. Yes No

 United States: _____(state) Canada Mexico
 - b. End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United State. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued. Yes No
 - c. The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy America Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.
_____(Item) _____(Country of Origin)
_____(Item) _____(Country of Origin)
2. The product/services being offered are raised, grown, produced, mined or manufactured in Ohio. Yes No
 - a. If YES, please list where in Ohio the product is raised, grown, mined, or manufactured.

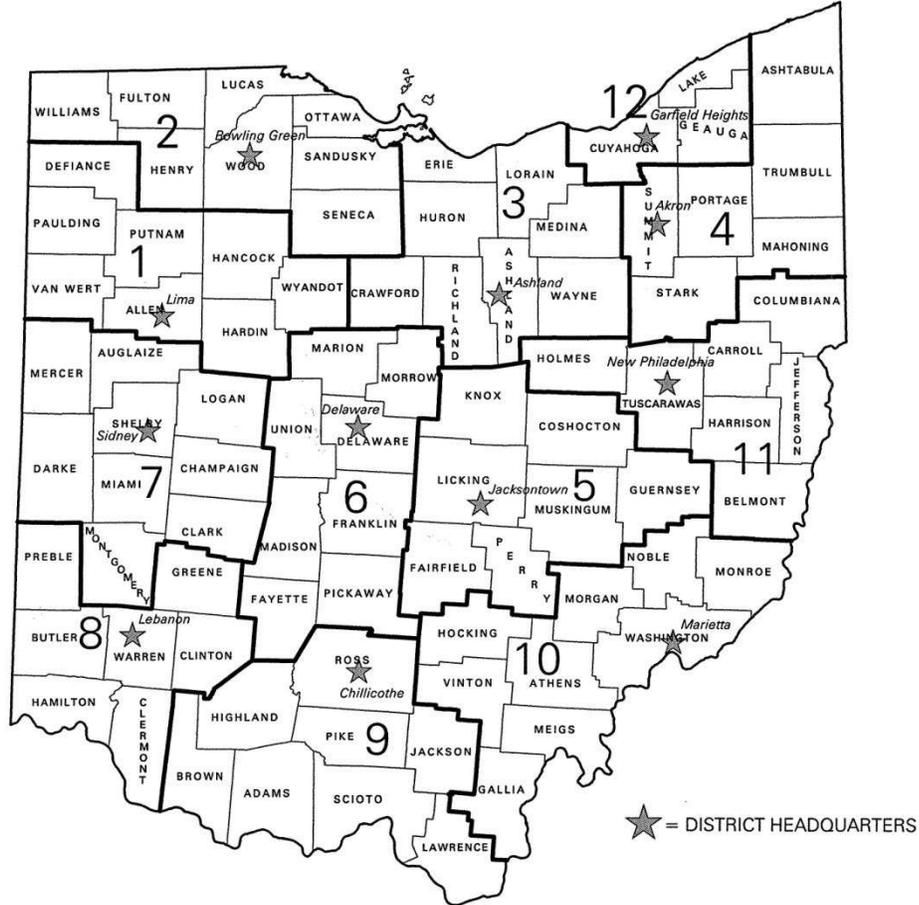
3. If the product is not raised, grown, mined, or manufactured in Ohio, the bidder must have a significant economic presence within the State of Ohio.
 - a. Bidder pays the required taxes due the State of Ohio. Yes No
 - b. Bidder is registered with the Ohio Secretary of State. Yes No
 - c. Bidder has ten or more employees based in Ohio. Yes No
 - d. Bidder has seventy-five percent or more employees based in Ohio. Yes No
4. Does the Bidder have facilities in one or more of the qualifying border states? Yes No
 Indiana Kentucky Michigan New York Pennsylvania
 - a. The product/services being offered are raised, grown, produced or manufactured in the border state. Yes No
 - b. Bidder has ten or more employees based in the border state. Yes No
 - c. Bidder has seventy-five percent or more employees based in the border state. Yes No
 - d. Mined products are mined in one or more of the following border states. Yes No
 Kentucky Michigan New York Pennsylvania

Note: Questions 1-4 above must be answered in full to qualify for the "Buy Ohio" preference, and to determine if products offered are made in the U.S.A.

This form replaces the former ODOT "Buy Ohio Affidavit". Signatures are not required. Notarization is not required.

DISTRICT MAP

**OHIO DEPARTMENT OF TRANSPORTATION
DISTRICT INFORMATION**



District	District Deputy Director, District Address	Telephone No.
1	1885 N. McCullough, Lima, Ohio 45801	419-222-9055
2	317 East Poe Road, Bowling Green, Ohio 43402	419-353-8131
3	906 North Clark St., Ashland, Ohio 44805	419-281-0513
4	2088 S. Arlington Rd., Akron, Ohio 44306	330-786-3100
5	9600 Jacksonstown Road, P.O. Box 306, Jacksonstown, Ohio 43030	740-323-4400
6	400 East Williams St., Delaware, Ohio 43015	740-363-1251
7	1001 St. Mary's Ave, P.O. Box 969, Sidney, Ohio 45365	937-492-1141
8	505 South State Rt. 741, Lebanon, Ohio 45036	513-932-3030
9	650 Eastern Ave., P.O. Box 467, Chillicothe, Ohio 45601	740-773-2691
10	338 Muskingum Drive, Marietta, Ohio 45750	740-373-0212
11	2201 Reiser Ave SE, New Philadelphia, Ohio 44663	330-339-6633
12	5500 Transportation Boulevard, Garfield Heights, Ohio 44125-5396, Mail: Box 258003, Garfield Heights, Ohio 44125-8003	216-581-2100

Invitation No. 012-10

Sealed replies to this invitation must be received at the following address on or before 11:00 a.m. on the opening date.

State of Ohio, Department of Transportation
Office of Contracts, Purchasing Services
1980 W. Broad Street, 1st floor
Columbus, Oh 43223
Office Hours 7:00 a.m. to 4:30 p.m., M-F

SIGNATURE PAGE
Invitation No: 012-10

Title: Consignment Contract for Storage Batteries Charged Wet

Failure to **return all the pages** of this ITB and sign on this page as indicated shall render your bid non-responsive and ineligible for award.

Your signature indicates that you attest to all statements made in this Invitation to Bid, including but not limited to the Buy Ohio Statement, and that you have read, understand and hereby agree to be bound by all Department of Transportation terms, conditions, specifications, requirements and addenda relating to this invitation.

Date: _____

By: _____
Authorized signature by Officer of the Company (Signature must be in a color other than Black)

Type or print name shown above

Title of Officer Signing

Name of Company

NOTICE: The Department will no longer provide bidders or other interested parties an opportunity to review bids on the day of the bid opening. This prohibition is necessary in order to facilitate the opening and reading of the bids in a timely and professional manner.

Pursuant to Section 149.43 of the Ohio Revised Code, interested parties may however, request to view previously submitted bids by sending a Public Records Request to ODOT:

Attn: Thomas P. Pannett
Acting Administrator
Office of Contracts
1980 W. Broad Street, 1st floor
Columbus, Ohio 43223



GOVERNMENT BUSINESS AND FUNDING CONTRACTS
In accordance with section 2909.33 of the Ohio Revised Code

DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

Form with fields: LAST NAME, FIRST NAME, MIDDLE INITIAL, HOME ADDRESS, CITY, STATE, ZIP, COUNTY, HOME PHONE, WORK PHONE

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

Form with fields: BUSINESS/ORGANIZATION NAME, BUSINESS ADDRESS, CITY, STATE, ZIP, COUNTY, PHONE NUMBER

DECLARATION

In accordance with division (A)(2)(b) of section 2909.32 of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

- 1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? [] Yes [] No
2. Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? [] Yes [] No

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3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No
4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No
5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No
6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism?
 Yes No

In the event of a denial of a government contract or government funding due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced on page 1 of this declaration.

X

Signature

Date