

STATE OF INDIANA
INDIANA DEPARTMENT OF TRANSPORTATION
INVITATION FOR BID

Bid #: 000221154B

Description: Laseroptical Linear Displacement Sensors

Bid Due Date: October 18, 2019

Time Due: 11:00 A.M. (EST/EDT – Indianapolis, IN)
(NO EXCEPTIONS)

Return Bid Response to:

INDOTprocurement2@indot.in.gov

Subject: Bid #000221154B

Purchasing Administrator: Dawn Ross

Date of Bid Release: October 4, 2019

The bids solicited under this Invitation for Bid will not be publicly opened nor read.

Bids should not be double sided.

FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RENDER YOUR BID NON-RESPONSIVE

Revised July 2019

The information below is a checklist to assist you in preparing a responsive bid. Please note that these instructions may not contain all applicable requirements, and careful reading of the Invitation for Bid is critical. It is not necessary to return this page with your bid response.

- ✓ **Type or print** all requested information, including prices and extensions, as well as accurate vendor information. Illegible documents will be deemed non-responsive.
- ✓ **Fill in all requested information**, including the Vendor Information, Request for Quote/Invitation to Bid, Qualification to do Business in Indiana, Exception to Bid and any other applicable forms accompanying this solicitation.
- ✓ **Do not add, delete or in any way change or modify the specifications or the Terms and Conditions** in this Request for Quote/Invitation for Bid. If your bid does not strictly meet the specifications, all deviations must be shown on the Exception to Bid form. By not listing any exceptions/deviations on the Exception to Bid form, the Vendor/Contractor has agreed to all requirements and criteria set forth in this Invitation for Bid and any resulting contract. Terms of the award will be those listed in this solicitation package and the resulting Contract, Quantity Purchase Award Agreement or Purchase Order.
- ✓ If you are not willing to accept a split award (partial order), you must include the statement "Bidding all or none" on the Request for Quote/Invitation to Bid form. ITEMS NOT BID – If you are not submitting a bid for an item, state "NO BID" in the unit column for that item.
- ✓ The forms contained herein must be signed by an authorized person. When you sign the Request for Quote/Invitation to Bid form, you are agreeing to the Terms and Conditions, special provisions and specifications included in this solicitation.
- ✓ When signing the enclosed forms, it is imperative that the company's name be the same as listed with the Indiana Secretary of State's office. The name of the DBA may be used if that DBA is also listed on the Vendor's Secretary of State's registration.
- ✓ If you are submitting more than one (1) bid response, you must complete and submit a separate bid package for each offer.
- ✓ Retain copies of your complete bid for your own information and files.
- ✓ The State of Indiana assumes no responsibility for incomplete solicitation responses.
- ✓ Bid(s) must be received by the due date and time indicated on the Invitation for Bid cover sheet.
- ✓ **Acceptable methods for submitting bid responses:**

To submit a bid electronically, the bid(s) must be submitted to the email address designated on the first page of this solicitation. **Bids should not be sent directly to the Buyer** as bid submissions cannot be retrieved by another authorized representative of the Procurement Section.

Cloud storage and file-sharing submissions will NOT be accepted. Email messages containing hyperlinks to cloud storage or file-sharing services will be considered non-responsive and will not be accepted or reviewed by the Procurement Section. Cloud storage and file-sharing submissions include, but not limited to, Dropbox, Google Drive, iCloud Drive and Microsoft OneDrive.

It is the responsibility of the vendor to verify (via a written email response or email read receipt) that their bid(s) was received by the Procurement Section BEFORE the designated bid due date and time.

In the event the files are too large or contain a large number of attachments, it is recommended to add INDOTprocurement2@indot.in.gov as a trusted email address per your email user instructions.

- ✓ **Bids must be submitted to the Procurement Section by the bid due date and time designated on the first page of this solicitation.**

Vendors should refer to INDOT's Procurement Website located at <http://www.in.gov/indot/2438.htm> for other related procurement information.

VENDOR INFORMATION

(Type or Print Legibly)

Company Name (as shown on your income tax return)	
DBA	
Purchase Order Mailing Address	
City, State and Zip	
Vendor Contact Name	
Phone Number	
Fax Number	
Email	
Federal Identification Number	
Website Address	

Payment (Remit) Address	
City, State and Zip	
Name of Financial Institution (Bank)	
Financial Institution (Bank) Address	
Last four (4) digits of the Account Number	

Buy Indiana Registration: Prior to award of this solicitation your business must register as a bidder at www.in.gov/idoa. Under Online Services to the right, then Register as a Bidder to access the Bidder Profile Registration page. Please be sure to complete the Buy Indiana certification page. It is preferred that businesses register immediately so that delay of solicitation award would not occur. This registration is maintained by you and you may update your information at any time. It remains in the database and covers all solicitation responses you submit to any state agency. It is very important that it be kept current. If you do not have access to a computer, you may call **317 234-3542** for assistance with your registration.

State of Indiana Bidder Profile Number: _____

For electronic contract signatures, provide the contact information of the individual that is authorized to execute a contract on behalf of the Contactor.

Name of Authorized Signatory: _____

Email address: _____

**Request For Quotation/
Invitation To Bid
Issued by State of Indiana**

Vendor
Remit to:

Name&Address
of Vendor:

RFQ/ITB 000221154B	Date 10/04/2019	Page 1 of 1
Fund/Object/Center:		
Dept Number:		
Project Number:		
Requisition No:		
Buyer:	Dawn Ross	
Reporting Code:		
Federal ID:		
Agency Number:	00800	
Facility:	INDOT - Research & Development	

Ship To: Dept Of Transportation
Research & Development
1205 MONTGOMERY ST PO Box 2279
WEST LAFAYETTE IN 47906

Please Follow Instructions Included in Solicitation Package
Must be returned by(time and date): **10-18-2019 11:00 AM**
Request Information from Buyer listed in Box in Upper Right Corner

****NOTICE:** All prices are assumed valid for ninety (90) days from Quotation opening date unless otherwise noted.

Line	Quantity	UOM	Item No/Description	(FOB Destination)	Unit Price	Extended Amt
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Vendor must include shipping and/or any other additional costs in bid response. Shipping and/or additional costs will not be paid if added to invoice.

Bid in accordance with Attachment A (Special Provisions).

1	2.00	EA	Laseroptical Displacement Sensors		\$	\$
2	2.00	EA	3 m Long Extension Cables for LLD Sensors		\$	\$
3	1.00	EA	RS422 to USB Converter for Transforming Digital Signals from LLD Sensors to USB Data Signals.		\$	\$

The following UN/CEFACT Unit of Measure
Common Codes are used in this document:
EA Each

<p>To be valid, all Quotations/Bids must be Signed manually.</p> <p>The State of Indiana reserves the right to accept or reject whole or any part of, the foregoing Quotation/Bid.</p>	<p>Representative Signature certifies no quotation/bid on this request has been submitted by officers, representatives or an affiliate of this firm under another name.</p>		<p>When can you ship?</p>
	<p>Please correct above Address</p>	<p>Typed Name of Representative</p>	<p>Telephone Number ()</p>
		<p>Title of Representative</p>	<p>Date of Quotation</p>

QUALIFICATION TO DO BUSINESS IN INDIANA

Indiana Law requires that all corporations, limited liability companies, limited liability partnerships, and limited partnerships trusts **must** be registered with the Indiana Secretary of State in order to do business in Indiana. This requirement **does not** apply to **sole proprietorships or general partnerships**. Failure to register with the Indiana Secretary of State will result in a determination that the company is not a responsible vendor.

PLEASE INDICATE IF YOUR COMPANY IS A:

- SOLE PROPRIETORSHIP**
- GENERAL PARTNERSHIP**
- CORPORATION**
- LIMITED LIABILITY COMPANY**
- LIMITED LIABILITY PARTNERSHIP**
- LIMITED PARTNERSHIP**
- OTHER _____

Our corporation, limited liability company, limited liability partnership or limited partnership is incorporated in the state of _____.

This company is currently registered with the Indiana Secretary of State (check one). Failure to provide complete and accurate information may affect your future ability to do business with the State of Indiana.

- Control Number Assigned by the Indiana Secretary of State for Verification Purposes _____**
Entity Creation Date in the State of Indiana _____

NOTE: This information may be obtained through the Secretary of State's office at the following website: <https://inbiz.in.gov/BOS/Home/Index>

- Our company is not registered with the Indiana Secretary of State's office. Is it your intent to register with the Indiana Secretary of State's office? Yes **No**
*NOTE: By selecting **No**, you are forfeiting any potential award resulting from this solicitation.*

Information concerning registration with the Indiana Secretary of State may be obtained by contacting:

Indiana Secretary of State
Corporation Section
302 West Washington Street, E018
Indianapolis, Indiana 46204
(317) 232-6576 or <https://inbiz.in.gov/BOS/Home/Index>

I certify that the information provided is a full and true account of this company's standing with the Indiana Secretary of State as of the date this bid is submitted.

Name of Company

Authorizing Signature

Date

Printed Name and Title

INQUIRIES ABOUT THE BID

Vendors shall promptly notify INDOT of any ambiguity, inconsistency or error that they may discover upon examination of this Invitation for Bid. All inquiries and request for information relating to this Invitation for Bid must be in writing and received no later than 11:00 A.M. on Friday, October 11, 2019. Inquiries must be made by e-mail to:

**Dawn Ross, Purchasing Administrator
Indiana Department of Transportation (INDOT)
Email: dross1@indot.in.gov**

Each vendor submitting written questions must clearly address each issue by reference to a specific section, page and item of this Invitation for Bid.

After the inquiry or request for information deadline specified above, INDOT will review those questions submitted; however, INDOT will reserve the right to determine whether any questions should be answered in writing and distributed to all those known to have received this Invitation for Bid. Only written responses signed by the Procurement Manager or his/her designee will be binding upon INDOT. Interpretations, corrections or changes to this Invitation for Bid made in any other manner will not be binding, and vendors shall not rely upon such interpretation, corrections, or changes.

Written questions received after the deadline may not be considered. INDOT will not respond to telephone or other oral inquiries or requests for information.

From the issuance date of this Invitation for Bid until a contract award is fully executed, vendors shall not communicate with any INDOT staff or officers regarding the procurement except as set forth above. Such action may disqualify the potential vendor from further consideration for an award of this bid.

EXCEPTION TO BID

Alternative products/equipment must be equal to or better than those specified as determined by the Indiana Department of Transportation, and vendors deviating from specified items should provide, with his or her bid, a listing of all areas in which his or her product/equipment deviates and fully explain and justify this alternative. Attach additional sheets if needed.

If a vendor wishes to submit more than one (1) bid, the vendor must complete a separate bid package for each offer. Additional pricing information should not be indicated on this page.

Any exceptions are to be noted below and listed by line number. By not listing any exceptions/deviations or signing this form, the Contractor has agreed to all requirements and criteria set forth in this Invitation for Bid and any resulting contract.

Name of Company

Authorizing Signature

Date

Printed Name and Title

CLAIMING PREFERENCES FOR SUPPLIES

Each vendor should review the various procurement preferences allowed by State statute. A summary of the preferences can be found in the Vendor Handbook located at <http://www.in.gov/indot/2438.htm>

Each vendor must answer the following questions pertaining to purchasing preferences. No preference will be applied unless these questions have been answered and any required attachments included prior to the bid due date and time.

1) Are you claiming the preference for supplies that contain recycled or post-consumer materials (IC 5-22-15-16)

Yes No

The preference does not apply when the purchase description is limited to a supply that contains recycled materials or post-consumer materials

If yes, a manufacturer’s certification dated within 90 calendar days prior to the bid due date must be submitted for each item or group of items for which the offeror is seeking a preference or the preference may not be considered.

2) Are you claiming the Indiana Business Preference (IC 5-22-15-20.5)

Yes No

Indicate under which provision for which you are claiming to qualify as an Indiana business. Vendors who wish to claim one of the Buy Indiana preferences below must have an email confirmation of their status provided by buyindianainvest@idoa.in.gov. A copy of this confirmation must be included in the solicitation response. The email confirmation must have been provided within one (1) year prior to the bid due date.

- _____ (1) A business whose principal place of business is located in Indiana.
- _____ (2) A business that pays a majority of its payroll (in dollar volume) to residents of Indiana.
- _____ (3) A business that employs Indiana residents as a majority of its employees.
- _____ (4) A business that makes significant capital investments in Indiana.

Any company that can demonstrate a minimum capital investment of \$5 million or more in plant and/or equipment or annual lease payments of \$2.5 million or more shall qualify as an Indiana business under category #4. If an out of state company does not meet one of these criteria, it can submit documentation/justification to the State for review for inclusion under this category. To verify that your company qualifies you can e-mail buyindianainvest@idoa.in.gov. Submit the response received for verification purposes.

- _____ (5) A business that has a substantial positive economic impact on Indiana.
Any company that is in the top 500 companies (adjusted) for one of the following categories: number of employees (DWD), unemployment taxes (DWD), payroll withholding taxes (DOR), or Corporate Income Taxes (DOR); qualifies as an Indiana business under category #5. To verify that your company qualifies you can e-mail buyindianainvest@idoa.in.gov. Submit the response received for verification purposes.

3) Are you claiming the Indiana Manufactured Preference (IC 5-22-15-20.5)

Yes No *This preference may only be claimed by respondents who claim the Indiana Business Preference.*

Submit necessary documentation detailing a substantial amount of manufacturing, assembly, or production of the products proposed is in the State of Indiana.

4) Are you claiming the US Manufactured Product Requirement (IC 5-22-15-21)

Yes No *This is per individual line and should be noted below.*

Vendor must provide information at the individual line level in regards to this preference. If yes, the bidder is certifying under penalties of perjury that each of the vendor’s end products as identified below is a US Manufactured Product as described in IC 5-22-15-21. A product is manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. (In determining if a product is manufactured in the United States, only the product and its components shall be considered).

Please list what line items this preference will apply to:

5) **Are you claiming the Indiana Small Business Preference (IC 5-22-15-23)** Yes No

If yes, bidder must indicate which category of small business concern applies:

- ___ Wholesale business with annual sales of four million dollars (\$4,000,000) or less during its last fiscal year. “Wholesale business, means a business that derives its principal source of income (over 50% of gross revenues) from sales to retailers, other merchants, or industrial, institutional or commercial users who will use the goods for resale or business use. This definition distribution activities.
- ___ Service business with average sales of five hundred thousand dollars (\$500,000) or less for the current and preceding three (3) fiscal years and which employs no more than twenty-five (25) persons. “Service business, “ means a business that derives its principal source of income (over 50% of gross revenues) from the sale of useful artistic, educational, intellectual, literary, or scientific labor from which no necessary tangible commodity is derived.
- ___ Retail business or business selling services with annual sales and receipts of five hundred thousand dollars (\$500,000) or less. “Retail business,” means a business that derives its principal source of income (over 50% of gross revenues) from the sale of supplies to the ultimate consumer.
- ___ Manufacturing business, which employs no more than one hundred (100) persons. “Manufacturing business” means a business that derives its principal source of income (over 50% of gross revenues) from the sale of goods the firm produces at its own facility made from raw, unfinished materials, as distinguished from the final product.
- ___ A business in any of the following sectors is not a small business if it employees more than one hundred (100) persons or if its annual sales exceed 5 Million dollars (\$5,000,000):
 - (A) Information Technology
 - (B) Life Sciences
 - (C) Transportation
 - (D) Logistics
- ___ A business that has a current verification as a veteran owned small business as defined by IC 5-22-14-3.5(a)(1-3).

6) **Are you claiming the Use of Steel Manufactured in the United States Requirement (IC 5-22-15-25)** Yes No

This requirement does not apply to purchases less than \$10,000.00

Providing false information will be subject to the sanctions found in IC 4-13-1-21 and IC 35-43-5-11.

Name of Company

Authorizing Signature

Date

Printed Name and Title

GENERAL BIDDING INFORMATION

1. Acknowledgment: This Agreement contains the complete and final Agreement between the State and the Contractor and no other Agreement in any way modifying any of said terms and conditions will be binding upon the State or the Contractor unless made in writing and signed by the State's and the Contractor's authorized representative.

2. Open Competition: The specifications contained in this Invitation for Bid are intended to be non-restrictive. Although at times brand names and model numbers may be used, they are merely intended to be guidelines to establish criteria and quality for competitive bidding. Alternative bids will be evaluated and may be acceptable so long as they can be verified as equal to or better than specified as determined by INDOT. It will be the responsibility of the vendor to provide all technical information as to the acceptability of the alternate product(s).

3. Containers And Packing: No charge will be allowed for packing, crating, or cartage unless specified in the Invitation for Bid. INDOT will not advance the cost of drums, carboys, cylinders, barrels, bags or other such returnable containers that, in the custom of trade, are considered as the property of the Vendor, except under the following conditions:

- + Charges for such containers are to be covered by memo invoice.
- + INDOT will return such containers when empty, transportation charges collect, to the destination specified by Vendor.
- + If INDOT fails to return such containers within a reasonable time, it shall pay for them.
- + The bid must clearly state Vendor's compliance with the foregoing conditions and the charges applying to such containers.

4. F.O.B. Destination: INDOT prefers bids to be submitted on a delivered basis; therefore, all bids will be considered to be made on the basis of all shipping charges prepaid and allowed. If transportation charges are NOT allowed, the vendor must so state and show charges in the bid. The shipment must be prepaid and transportation charges added to the invoice. The State of Indiana will pay for such transportation charges only on the basis of the lower price, whether it is the one shown in the bid or the charge shown on the prepaid freight bill. **UNDER NO CIRCUMSTANCES WILL THE STATE ACCEPT COLLECT SHIPMENTS.**

5. Pricing: Unit price must be entered and extended, and the total price of the bid must be shown. Unit prices are to be bid on the basis of the unit specified. If there is an error between the unit price and total price, the unit price shall prevail. Awarded prices: prices listed for each item are firm and cannot be changed. Any revision in price may be rejected at the discretion of INDOT and may result in the cancellation of the Purchase Order without recourse on the part of the awarded Vendor.

6. Rejection of Bids: INDOT reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one (1) vendor. Vendors bidding on an "all or none" basis must state such fact in the bid.

The Request for Quote form must be manually signed and submitted prior to the bid due date and time; otherwise, the bid will be deemed non-responsive and will not be considered for award.

Any errors in extension or total may result in rejection of the bid.

7. Evaluation of Bids: In accordance with 105 IAC 12-2-16, a contract shall be awarded by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in this invitation for bid.

8. Forced Labor (IC 5-22-15-24.2): Vendor warrants that all supplies delivered pursuant to this Contract were not made in a foreign country using forced labor.

9. Inspection. All material, workmanship or services provided pursuant to this Contract shall be subject to INDOT's inspection and tests at all times. Vendor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspection and testing required by INDOT. INDOT shall have the right to reject and return at Vendor's expense, or require at Vendor's expense, the correction or replacement of materials, workmanship or services which are defective or do not conform to specifications.

10. Patents: Vendor agrees to defend, at its own expense, the State of Indiana and to hold it harmless with respect to any claims that goods, equipment or supplies furnished by Vendor under this Contract infringe or allegedly infringe any patents enforceable in the United States, and with respect to any and all suits, controversies, demands, and liabilities arising out of such claims; provided that the foregoing shall not apply to infringement resulting from Contractor's use of a patented invention required to comply with the written instructions of the State, if such patented invention is not normally utilized by Vendor, and provided that the State: 1) gives Vendor a prompt written notice of any claim; and 2) allows Vendor to control and fully cooperate with Vendor in the defense and all related settlement negotiations.

11. Quality: Vendor warrants all materials and/or services delivered pursuant to this Contract to be free from defect of material or workmanship, and to conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery acceptance or payment by the State of Indiana for the material or service.

12. Quantity: Goods or supplies shipped in excess of the quantity designated on the Purchase Order may be returned at Contractor's expense.

13. Federal Funding Source Considerations: If any one or more of the listed criteria on which the responses to this quote or bid will be evaluated are found to be inconsistent or incompatible with applicable federal laws, regulations or policies, the specific criterion or criteria will be disregarded and the responses will be evaluated without taking into account such criterion or criteria.

14. Pricing Preferences: The maximum aggregate price preference available to any vendor is 15%. A vendor may claim one (1) of the following types of preference for which the vendor is eligible:

- a) An Indiana business preference (IC 5-22-15-20.5)
- b) A price preference for supplies that contain recycled or post-consumer materials (IC 5-22-15-16)
- c) An Indiana small business preference (IC 5-22-15-23). The vendor assures that if they are receiving the award based on the Indiana Small Business Preference that the vendor will be performing a minimum of 80% of the work involved with their own forces. This contract is not assignable either in whole or in part, nor shall it be subcontracted after award without the State's prior written consent.

15. Taxes: Prices listed on an invoice submitted by the Contractor for payment is not to include any tax for which the State is exempt. The State will furnish a tax exempt certificate, if requested by the Contractor. The State will not be responsible for any taxes levied on the Contractor as a result of this Agreement.

TERMS AND CONDITIONS

All responses to this Invitation for Bid, and the award of any Contract(s) arising out of this Invitation, are specifically subject to the following terms and conditions, which are incorporated fully into this Invitation for Bid and into any Contract arising hereunder. "Vendor" means the person or entity responding to this Invitation for Bid and "this Contract" means any contract awarded to Vendor as a result of this Invitation for Bid.

1. Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

2. Assignment; Successors. A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

3. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

4. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

5. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

6. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

7. Compliance with Laws. A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.*, and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDO) following the procedures for disputes outlined herein. A determination by IDO shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC § 5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

- (i) IC § 24-4.7 [Telephone Solicitation Of Consumers];
- (ii) IC § 24-5-12 [Telephone Solicitations]; or
- (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.

8. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

9. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

10. Debarment and Suspension. A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

11. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

12. Disputes. A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

13. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

14. Employment Eligibility Verification. As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

15. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

16. Funding Cancellation. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

17. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

18. Indemnification. The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

19. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

20. Information Technology Enterprise Architecture Requirements. If this Contract involves information technology-related products or services, the Contractor agrees that any such products or services are compatible with the technology standards, including the assistive technology standard, all found at <https://www.in.gov/iot/2394.htm>. The State may terminate this Contract for default if the terms of this paragraph are breached.

21. Insurance. A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.

5. Valuable Papers coverage, if applicable, with an Inland Marine. Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
6. Surety or Fidelity Bond(s) if required by statute or by the agency.
7. Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

22. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

23. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

24. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

25. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) Bid/RFP#000221154B, (4) Contractor's response to Bid/RFP#000221154B, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

26. Ownership of Documents and Materials. A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

27. Payments. A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

28. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

29. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

30. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on the transparency portal as required by IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

31. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

32. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

33. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

34. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

35. Termination for Default. A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

36. Travel. No expenses for travel will be reimbursed unless specifically authorized by the Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency's *Financial Management Circular - State Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

37. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

38. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

ATTACHMENT A

INDIANA DEPARTMENT OF TRANSPORTATION (INDOT) SPECIAL PROVISIONS FOR LASEROPTICAL LINEAR DISPLACEMENT SENSORS

1. Evaluation of Bids

In accordance with 105 IAC 12-2-16, this Contract shall be awarded by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in this *Invitation for Bid*.

The intent of these specifications is to provide a foundation for competitive bidding of comparable products and/or services. Absolute conformity is **required**, although minor and insignificant technical deviations may be deemed in compliance with the specifications and eligible for an award. Any exceptions to the specifications should be clearly identified on the *Exception Sheet*. INDOT reserves the right to evaluate compliance with the specifications.

2. Ordering

Authority to place orders does not authorize INDOT personnel to change, modify, clarify, amend or otherwise alter the terms, conditions, and specifications of such Contract; this authority is retained in the INDOT Procurement Section.

Any attempt to sell any product and/or service not specifically awarded under this Contract is a violation of the Contract. Any such action is subject to the legal and contractual remedies available to INDOT inclusive of but not limited to cancellation of this contract, suspension and/or debarment of the Contractor. The intent of this subsection is to require the Contractor to comply with the normal and customary INDOT procurement process. This subsection does not prohibit Contractor from bidding on other eligible bid opportunities.

3. Increase in Quantities (Optional)

Within ninety (90) calendar days from the date of the awarded purchase order, INDOT may purchase additional quantities under the same terms and conditions; specification requirements; and pricing as awarded under this Contract.

If INDOT chooses to invoke this option, the Contractor must agree in writing prior to issuing a subsequent purchase order.

4. Pricing

INDOT reserves the right to validate the pricing through the manufacturer to ensure pricing offered by the vendor is fair and reasonable.

Unit pricing will be delivered prices F.O.B. Destination where all shipping charges are prepaid and allowed to the INDOT facility. Freight will be included in the bid price and no additional freight will be charged.

Any increase beyond the original contracted unit price will be rejected and may result in cancellation of the Purchase Order and/or Contract without recourse on the part of the Contractor.

Prices may be adjusted downward without prior approval of the Procurement Section.

5. Delivery

The successful Contractor shall deliver to the address requested within **FORTY-FIVE (45) CALENDAR DAYS** following either a written or verbal order.

INDOT will accept deliveries between 8:00 a.m. and 2:00 p.m. Monday through Friday, excluding State holidays.

Repeated failure to comply with this term may result in a determination of breach with subsequent cancellation of the Purchase Order and/or Contract.

If any indicated or actual delays arise, the INDOT location must be notified immediately and the cause for such delay stated. If any supplies, services and/or equipment are not delivered within the time specified in this Purchase Order and/or Contract, the INDOT Procurement Section may cancel this Purchase Order and/or Contract and all rights and duties thereunder will be discharged and terminated.

Supplies shipped in excess of the quantity ordered may be returned at the Contractor's expense.

All supplies delivered shall arrive with complete installation and operating instructions and any other additional information pertaining to the supplies.

6. Invoicing

The invoice(s) shall be sent to:

Research and Development

Researchinvoices@indot.in.gov
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Payments to Contractors will be made to the authorized Contractor after all required documentation and invoices have been supplied to *invoice* address.

Each invoice shall contain:

- a) A unique reference number;
- b) Date of invoice;
- c) The federal ID number and remit/payment address;
- d) Date the products and/or services were delivered/rendered;
- e) Purchase order number;
- f) Description of the products and/or services;
- g) Unit price based on the purchase order unit of measure;
- h) The total amount charged.

All payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

INDOT will only pay for the actual quantities received or services rendered and payments will be in accordance with IC 4-13-2.

7. Acceptance of Equipment

The **acceptance date** shall be the date that the complete unit, ready to operate, has been delivered to the location stipulated herein, and undergone any *bidder testing* as well as successful *inspection* and *performance testing* by INDOT personnel. INDOT will provide formal notice of acceptance. *The inspection* shall ensure the unit both meets the design specifications and is truly ready to operate. *Performance testing* relates to ensuring the machine meets the performance requirements as outlined herein. The results of inspection and performance testing must be successful for acceptance to occur. The process of inspecting and testing the equipment will be completed by INDOT within fifteen (15) calendar days following delivery. In the event the equipment is found not to meet specifications, acceptance may be delayed or the equipment may be rejected.

If, after fifteen (15) calendar days, INDOT has neither: 1) formally given notice of its acceptance of the equipment; or 2) formally identified any non-compliance issues with the specifications or terms of the Agreement, then the equipment shall be deemed accepted at this time.

The equipment warranty shall become effective on the **acceptance date**.

However, if during the warranty period the unit is found to not meet the bid specifications, it will be the manufacturer's responsibility to make such changes as required to meet the specifications at no cost to INDOT.

8. Warranty

If applicable, the bidder shall indicate on the Exception Sheet any limitations and/or additional durations of their warranty. **As a minimum, the warranty period shall conform to the requirements stated herein. INDOT reserves the right to request a copy of the actual warranty manufacturer's warranty.**

The warranty period to begin at the time of completion, acceptance by INDOT and the date of the vendor's invoice.

If during the warranty period, the unit is found to not meet the bid specifications, it will be the Contractor's responsibility to make such changes as required to meet the specifications at no cost to INDOT.

If it is discovered that repairs are not covered under the warranty period, the Contractor shall contact INDOT for review and written approval prior to commencement of any additional repairs. Without prior written approval, INDOT will not be responsible for any additional costs not covered under the warranty.

Contractor agrees to perform due diligence and ensure all reasonable measures are taken that any assuming or future controlling entity encumbers any and all remaining warranty, duties and other items not completed within this Contract.

Warranty for Products:

The Contractor will furnish all parts and maintenance at no charge for a period of at least 90 days or the manufacturer's standard warranty, whichever is longer, provided that such maintenance and parts are not required because of an accident, neglect, misuse, or force majeure event. Contractor shall be responsible for removal and/or disposal of all replaced parts. Prior to the expiration of the warranty period, whenever equipment is shipped for a mechanical replacement purpose, the Contractor shall bear all cost of such shipment including, but not limited to, cost of packing, transportation, rigging drayage, and insurance. All replacements shall be covered by a new warranty.

9. Cancellation Due to Non-Compliance

If INDOT cancels this Agreement due to the Contractor invoicing more than the Agreement unit price or the Contractor's inability to comply and/or perform the requirements of this Agreement, INDOT reserves the right to deem the Contractor not eligible to submit bids for future purchases of like or similar products and/or services required by INDOT for a period of not less than one (1) year from the date of the cancellation.

In the event this Agreement is canceled, INDOT reserves the right to assess the Contractor "cover charges" as defined under Indiana Code (IC) 26-1-2-712 for the difference in cost between the Contractor's price and the new vendor's contract price.

10. Minimum Specifications

ITEM	ITEM DESCRIPTION	COMPLIANCE
1.	Product Offered: Make: _____ Model: _____	<input type="checkbox"/> yes <input type="checkbox"/> no
2.	Two (2) Laseroptical linear displacement (LLD) sensors. The LLD sensors shall meet the following requirements: <ul style="list-style-type: none"> • Sensor size no larger than 46 mm long, 20 mm wide, and 30 mm high • 0.3 m long integrated cable with 12 pin connector • 10 mm measuring range • 20 mm start of measuring range • Adjustable measurement rates of 0.25 kHz, 0.5 kHz, 1 kHz, 2 kHz, and 4 kHz • 670 nm laser wavelength • 4 to 20 mA analog output • Digital output via RS422 • 11 to 30 VDC power supply 	<input type="checkbox"/> yes <input type="checkbox"/> no
3.	One (1) RS422 to USB converter for transforming digital signals from LLD sensors to USB data signals. The RS422 to USB converter shall meet the following requirements: <ul style="list-style-type: none"> • Four (4) RS422 channels • A USB port for connecting to a personal computer 	<input type="checkbox"/> yes <input type="checkbox"/> no
4.	Two (2) 3m long extension cables for LLD sensors	<input type="checkbox"/> yes <input type="checkbox"/> no