

OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES

DIVISION OF LEGAL AND OVERSIGHT

**REQUEST FOR PROPOSALS
TO BECOME A HEARING EXAMINER**

Rev. 4-12-2013

I. Overview

The Ohio Department of Developmental Disabilities (“DODD”) is a state agency dedicated to the continuous improvement of the lives of individuals with developmental disabilities. In support of this mission, DODD reviews applications from individuals to become certified to provide services to individuals with developmental disabilities and monitors certified providers to ensure they are following the rules and regulations governing their conduct. DODD also licenses facilities where individuals with developmental disabilities reside. These facilities vary greatly in size, from large institutions housing over 100 people, to four bed facilities that are like any average home in the community. Whenever DODD proposes to take any adverse action against a facility, certified provider, or applicant seeking to be a provider or operate a facility, the individual adversely affected has the right to contest the action in a due process hearing in accordance with Ohio Revised Code Chapter 119, Ohio’s Administrative Procedure Act.

DODD also has an administrative rule that permits certain individuals to request an in-house hearing when they believe DODD is not acting in accordance with its own statutes and rules. These complaints are not conducted in accordance with Ohio Revised Code Chapter 119, but still require an impartial determination of whether DODD’s actions are supported by applicable statute or rule.

All of the hearings described above will be presided over by the bidder or bidders that best meet the requirements set forth below in this Request for Proposals (“RFP”).

II. Scope of Work and Specification of Deliverables

In order to be considered for a contract, the bidder must be an attorney licensed to practice law in the State of Ohio. The duties of the hearing examiner will be as follows:

- (A) Conduct adjudication hearings in accordance with Ohio Revised Code Chapter 119 and in-house administrative hearings in accordance with the Ohio Administrative Code.
- (B) Issue a Report and Recommendation (“R&R”) to the Director for consideration. In most instances, these R&R’s shall be submitted to DODD within 30 days of the later of the following events: the conclusion of the hearing, receipt of the transcript, or receipt of any post-hearing briefs. For hearings regarding provider suspension orders, the R&R shall be submitted within 10 days. The only exception to this requirement is when the hearing examiner shows extraordinary good cause, which is left to the determination of the contract supervisor, DODD’s Chief Legal Counsel. Any R&R that is not timely filed can, at DODD’s discretion, result in a 2% per day reduction in fees owed to the hearing examiner.

- (C) The chosen contractor shall not accept employment with or represent any party in any matter relating to DODD during the term of the contract.
- (D) The contractor shall not bill DODD for services until the R&R has been submitted to DODD unless work has been performed on a case that is settled or otherwise resolved prior to a hearing.

III. Proposal Format and Submission

Each bidder shall submit a technical proposal and cost proposal that meets the requirements set forth below. The cost proposal should be submitted in a separate sealed envelope labeled "Cost Proposal Do Not Open."

- (A) Technical Proposal: A technical proposal should include: (1) a resume that documents the bidder's work experience and education; (2) 2 references; (3) a writing sample; and (4) a written statement that clearly describes why the bidder should be selected to perform the services described in Section II above.
- (B) Cost Proposal: The cost proposal must indicate the hourly rate the bidder will charge if awarded a contract pursuant to this RFP. DODD will not compensate contractors for travel time to and from hearings.
- (C) Proposal Format and Submission: Proposals must be submitted via postal service by May 3, 2013 at 3:00 p.m. to:

Brad C. Singer
 Associate General Counsel
 Ohio Department of Developmental Disabilities
 Office of Legal and Oversight
 30 East Broad Street, 12th Floor
 Columbus OH 43215

IV. Criteria for Proposal Evaluation and Selection

All proposals will be reviewed and scored by staff from DODD. The proposals will be scored based on the following 100 point scale.

| | |
|----|---|
| 45 | The bidder demonstrates competence, knowledge and qualifications as outlined in the technical proposal. |
| 30 | The hourly rate designated in the cost report. |
| 15 | The bidder's past performance on similar projects in Ohio or other states. |
| 10 | The bidder's proposal is consistent with the instructions in the RFP. |

V. Term and Cost Parameters

The term of the contract will coincide with the state biennium, beginning July 1, 2013 and ending June 30, 2015. The contract amount will be partitioned based on the two state fiscal years ("SFY") that make up the biennium. Thus, the maximum contract amount for SFY '14 (July 1, 2013 to June 30, 2014) will be \$15,000, and the maximum contract amount for SFY '15 (July 1, 2014 to June 30, 2015) will also be \$15,000. This results in a total maximum contract amount of \$30,000.

The maximum contract amount is not a guaranteed payment to the contractor. The contractor will only be paid for hours actually worked on the contract up to the contract maximum.

VI. Contractual Requirements

- (A) Any contracts resulting from the issuance of this RFP are subject to the terms and conditions as provided in the model contract, a sample of which is attached to this RFP.
- (B) Payments for any and all services provided pursuant to the contract are contingent upon the availability of state funds.
- (C) The contractor will not use or disclose any information made available to him or her for any purpose other than to fulfill the contractual duties specified in the RFP. The contractor must agree to be bound by the same standards of confidentiality, including federal statutory and regulatory requirements pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Title XIII, Subtitle D, of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), known as the Health Information Technology for Economic and Clinical Health Act, as amended ("HITECH Act"), that apply to the employees of DODD and the State of Ohio.

VII. Other Requirements

- (A) Requests for Interpretation/Clarification: If a bidder finds any perceived conflict, error, omission or discrepancy in this RFP, the bidder shall submit through e-mail any requests for interpretation or clarification to:

Brad C. Singer
Associate General Counsel
Ohio Department of Developmental Disabilities
Office of Legal and Oversight
Bradley.Singer@dodd.ohio.gov

Requests for interpretation or clarification must be received by 3:00 p.m., May 2, 2013.

- (B) Communications Prohibited: From the issuance date of this RFP, until the contract is awarded to a bidder, there may not be communications concerning the RFP between any bidder who expects to submit a proposal and any employee of DODD involved in issuing of the RFP. The only exception to this prohibition is the submission of an e-mail request for clarification or interpretation in accordance with Section VII(A).
- (C) State Contracts: Proposals must list any current contracts the bidder has with State of Ohio agencies, boards, and/or commissions. The list must indicate the purpose of the contract, the amount of the contract, the time period covered by the contract, and the percent of the project completed.
- (D) Interview: Individuals submitting bids may be requested to participate in an interview as part of the evaluation process. DODD reserves the right to select from responding bidders for interviews and may not interview all bidders submitting proposals. The bidder shall bear the cost for the time and travel to any scheduled interview.
- (E) Proposal Costs: Costs incurred in preparing a proposal and any subsequent contracts are to be borne by the bidder. DODD will not contribute in any way to the costs of preparation.
- (F) Proprietary Information: All proposals submitted shall become the property of DODD. All information submitted by the bidder will be considered to be public information unless the bidder specifically demonstrates, in writing, which information it considers to be proprietary. "Proprietary information" is information which, if made public, would put the bidder at a disadvantage in the marketplace and trade in which the bidder is a part. Consequently, any assertion of "proprietary" information must be clearly identified and the basis of the assertion must be included. It is not adequate for the bidder to simply state that disclosure of the information will put it at a disadvantage in the marketplace. DODD will make the final decision as to whether information is "public" or "proprietary."
- (G) Minority Business Enterprise: DODD is required by Section 125.081(B) of the Ohio Revised Code to award fifteen percent (15%) of its procurements to vendors certified as Minority Business Enterprises ("MBE"), pursuant to Section 123.151(B)(1) of the Ohio Revised Code. If the bidder is a MBE, then its status must be indicated in the proposal.
- (H) Ethical and Conflict of Interest Requirements:
 1. No contractor or individual, company or organization seeking a contract shall promise or give to any DODD employee anything of value that is of such character as to manifest a substantial and improper influence upon the employee with respect to his or her duties.
 2. No contractor or individual, company or organization seeking a contract shall solicit any DODD employee to violate any of the conduct requirements for employees.

3. Any contractor acting on behalf of DODD shall refrain from activities that could result in violations of ethics and/or conflicts of interest. Any contractor or potential contractor who violates the requirements and prohibitions defined here or of Section 201.03 or of Section 102.04 of the Ohio Revised Code is subject to termination of the contract or refusal by DODD to enter into a contract.
 4. DODD employees and contractors who violate Sections 102.03, 102.04, 2921.42 or 2921.43 of the Ohio Revised Code may be prosecuted for criminal violations.
- (l) Cancellation: DODD is under no obligation to issue a contract as a result of this solicitation if, in the opinion of DODD, none of the proposals are responsive to the objectives and needs of DODD. DODD reserves the right to not select any bidder should DODD decide not to proceed. DODD is under no obligation to issue the contract until approval is received from the state controlling board or Office of Budget and Management.

DODD reserves the rights to reject any and all proposals where the bidder takes exception to the terms and conditions of the RFP or fails to meet the terms and conditions, including but not limited to, standards, specifications and requirements as specified in the RFP.

DODD reserves the right to reject, in whole or in part, any and all proposals where DODD, taking into consideration factors including but not limited to, price and the results of the evaluation process, has determined that award of a contract would not be in the best interest of DODD or the state.

VIII. Protest Procedure

Any potential or actual bidder objecting to the award of a contract resulting from the issuance of this RFP may file a protest of the award of the contract, or any other matter relating to the process of soliciting the proposal. Such a protest must comply with the following guidelines:

- (A) Protest may be filed by a prospective or actual bidder objecting to the award of a contract resulting from this RFP. The protest shall be in writing and shall contain the following information:
1. The name, address and telephone number of the protestor;
 2. The title of the RFP being protested;
 3. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents;
 4. A request for a ruling by DODD;
 5. A statement as to the form of relief requested from DODD; and
 6. Any other information the protestor believes to be essential to the determination of the factual and legal questions at issue in the written protest.

- (B) A protest shall be considered timely by DODD, if received by the Chief Legal Counsel within the following periods:
1. A protest based on alleged improprieties in the issuance of the RFP or any other event preceding the closing date for receipt of proposals which are apparent or should be apparent prior to the closing date for receipt of proposals shall be filed no later than 3:00 p.m. on the closing date for receipt of proposals, which is May 3, 2013.
 2. If the protest relates to the announced intent to award a contract, the protest shall be filed no later than 3:00 p.m. of the fifth (5th) business day after the issuance of the Letter of Intent to Award the contract.
- (C) An untimely protest may be considered if DODD determines that the protest raises issues significant to DODD's procurement system. An untimely protest is one received by DODD's Chief Legal Counsel after the time period set forth in Paragraph B of this section.
- (D) All protests must be filed with the following:

Chief Legal Counsel
Ohio Department of Developmental Disabilities
Office of Legal and Oversight
30 East Broad Street, 12th Floor
Columbus OH 43215

- (E) When a timely protest is filed, a contract award shall not proceed until a decision on the protest is issued or the matter is otherwise resolved, unless the Director of DODD determines that a delay will severely disadvantage DODD. The bidder(s) who would have been awarded the contract shall be notified of the receipt of the protest.
- (F) DODD shall issue written decisions on all timely protests and shall notify any bidder who filed an untimely protest as to whether or not the protest will be considered.

Thank you for your interest in this project.

| Fund | Account | ALI | Department | Program | Grant | PO Number | CB and/or R&P Number (if applicable) |
|------|---------|-----|------------|---------|-------|-----------|--------------------------------------|
| | | | | | | | |

Ohio Department Developmental Disabilities
PERSONAL SERVICE CONTRACT

SECTION A. CONTRACT PARTIES

This contract is entered into between the Ohio Department Developmental Disabilities (Agency), on behalf of the following:

| | |
|---|------------------------------------|
| Name of Developmental Center, Office, or other Contracting Entity | Address (Street, City, State, Zip) |
|---|------------------------------------|

and

| | | |
|-------------------|------------------------------------|--------------------|
| Contractor's Name | Address (Street, City, State, Zip) | OAKS Vendor Number |
|-------------------|------------------------------------|--------------------|

Type of Service Provided:

SECTION B. EFFECTIVE DATES

This contract is effective: _____ through _____ unless terminated prior thereto pursuant to Section G. Services shall not begin until Agency receives OBM approved Purchase Order.

SECTION C. COMPENSATION

1. The Contractor will be paid for the term of this contract as follows (check option a or b):
 - a. Fee Schedule. Attach Fee Schedule to Contract or include Fee Schedule in Section D.1.a.
 - b. Hourly Rate. Complete the information below

| Fiscal Year | Rate per Hour | Maximum Hours Worked | Maximum Fiscal Year Contract Amount |
|-------------|---------------|----------------------|-------------------------------------|
| | | | |
| | | | |

Maximum Contract Amount for Biennium _____

Renewal Clause-Contract Extension. By mutual agreement of the parties, this Contract may be renewed for up to an additional two years.

2. Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Contract.
3. Contractor shall submit a valid invoice on letterhead for the compensation incurred consistent with this Section, within twenty (20) days of the end of each month. Each invoice shall contain the following information:
 - a. a description of the services performed;
 - b. date of the services rendered;

- c. a total for the invoice;
 - d. vendor's name and address; and
 - e. Department's name.
4. Agency shall pay Contractor within thirty (30) days of receipt and approval of the invoice.
 5. This Contract does not guarantee a minimum amount of service. Services shall be performed on an as needed basis as directed by Agency.

SECTION D. DUTIES OF CONTRACTOR

1. Contractor shall:
 - a. (Either list duties and associated fees OR type "See Request for Proposal and Response to Request")
 - b. Contractor shall maintain all necessary licenses or registrations. Contractor shall perform all services with reasonable care, skill and diligence as would normally be provided by an experienced consultant and in accordance with industry standards.

OR – (select either the paragraph above or below – which ever is most applicable then delete the other and this note)

Contractor shall maintain all necessary licenses and registrations. All services shall be performed in accordance with: (1) generally accepted standards of care in the community and the quality criteria adopted by the Agency; (2) policies of the Agency; and (3) applicable rules and standards for the certification of an intermediate care facility for the mentally retarded.

- c. The contractor reports directly to (name and title of supervisor) _____ who will verify the contract's time and service charged to this contract.
2. Contractor shall comply with all applicable statutes and all Agency rules including but not limited to the following specific duties and responsibilities:
 - a. "Direct services position" means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals.
 - b. "Specialized services" means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by the Contractor. If there is a question as to whether the contractor or its employee is providing specialized services, the contractor shall request that the Department make a determination. The Department's determination is final.
 - c. Background Check Requirements. If Contractor will be placing employees, including staff working through a temporary agency, in a Developmental Center to work in a direct services position for the provision of specialized services to the individuals residing in the Developmental Center, the Contractor will comply with the criminal background check requirements in Ohio Administrative Code 5123:2-3-06.
 - d. Tuberculosis Testing

(i) Habilitation staff and support staff employed on or after the effective date of this rule shall be tested for tuberculosis in accordance with this paragraph. The required tuberculosis test shall

include a two-step Mantoux tuberculin skin test administered by a person properly trained to administer tuberculin skin tests, or, if the person has a documented history of a significant Mantoux skin test, an x-ray. The person shall not work in the facility until after the results of the first skin test have been obtained and recorded in millimeters of induration. If the first step is non-significant, a second step shall be performed at least seven, but not more than twenty-one, days after the first step was performed. Only a single Mantoux is required if the person has documentation of either a single-step Mantoux test or a two-step Mantoux test within one year of commencing work.

- (ii) If either step of the Mantoux test is significant, the person shall have a chest x-ray and shall not enter the residential facility until after the results of the chest x-ray have been obtained and the person is determined to not have active pulmonary tuberculosis. Whenever a chest x-ray is required by this paragraph, a new chest x-ray need not be performed if the person has had a chest x-ray no more than thirty days before the date of the significant Mantoux test. Additional Mantoux testing is not required after one medically documented significant test. A subsequent chest x-ray is not required unless the person develops symptoms consistent with active tuberculosis.
 - (iii) For persons with a significant Mantoux test and the chest x-ray does not indicate active pulmonary tuberculosis, the facility shall require that the person be evaluated and considered for preventive therapy. Thereafter, the facility shall require the person to report promptly any symptoms of tuberculosis which include unexplained weight loss, loss of appetite, chronic cough of more than three weeks, fever, coughing, and spitting up blood and night sweats. The facility shall annually document the presence or absence of symptoms suggestive of tuberculosis in such a person and maintain this documentation on file.
 - (iv) After initial screening for tuberculosis required by this paragraph and annually thereafter within one year plus or minus thirty days of the previous year's date of screening, a tuberculosis screening for symptoms suggestive of active tuberculosis shall be conducted for all habilitation and support staff. This screening shall include, at a minimum, questions about the signs and symptoms of tuberculosis as indicated in paragraph (B)(6)(b) of this rule. The frequency of any additional Mantoux skin test screenings or the need for a physician evaluation shall be dependent upon this assessment. [5123:2-3-07(B)(6)(a-c)].
- e. Personnel Records. Personnel records shall be maintained for each employee in accordance with the contractor's personnel policies. [5123:2-3-07(D)].
 - f. Professional Staff Credentials. Professional program staff must be licensed, certified, or registered, as applicable by the state, to provide professional services in the field in which they practice. [5123:2-3-07(B)(7)].
 - g. First Aid and CPR Training. The Contractor shall ensure that designated staff receive training in first aid and CPR to comply with the requirements established in rule 5123:2-3-07("Employment and Staffing") of the Administrative Code. [5123:2-3-08(B)(5)].
 - h. Compliance with Laws. Upon request, Contractor shall provide the Developmental Center with a copy of any report or abstract obtained under Ohio

SECTION E. NATURE OF CONTRACT

1. Agency enters into this Contract in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. It is specifically understood that the nature of the services to be rendered under this Contract are of such a personal nature that Agency is the sole judge of the adequacy of such services. Agency thus reserves the right to terminate this Contract should Agency at any time be dissatisfied with Contractor's performance of its duties under this Contract.
2. In the event of a termination of this Contract by Agency, Contractor shall be reimbursed in accordance with Section G., Termination of Contractor's Services.
3. Agency may, from time to time, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Contract. Upon such notice, Contractor shall comply with such instructions and fulfill such requests to Agency's satisfaction. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Contract. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor. Agency retains the right to ensure that Contractor's work is in conformity with the terms and conditions of this Contract.

SECTION F. CERTIFICATION OF FUNDS

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Contract shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that Agency gives Contractor written notice that such funds have been made available to Agency by Agency's funding source.

SECTION G. TERMINATION OF CONTRACT

1. Agency may, at any time prior to the completion of services by Contractor under this Contract, suspend or terminate this Contract with or without cause by giving five (5) days written notice to Contractor.
2. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by Agency, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Contract, including, without limitation, results, conclusions resulting therefrom, and any other matters Agency requires.
3. Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with invoices as required under Section C. In the event of suspension or termination, any payments made by Agency for which Contractor has not rendered services shall be refunded.

4. In the event this Contract is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Agency all work products and documents which have been prepared by Contractor in the course of providing services under this Contract. All such materials shall become and remain the property of Agency, to be used in such manner and for such purpose as Agency may choose.
5. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against Agency by reason of such suspension or termination.
6. Contractor may terminate this Contract with or without cause upon thirty (30) days prior written notice to Agency.

SECTION H. INDEPENDENT CONTRACTOR

1. No relationship of employer and employee is created by this contract. Contractor will act hereunder as an independent contractor with no claim under this Contract or otherwise against Agency or the State of Ohio for business expenses, travel expenses, vacation pay, sick pay, retirement benefits, workers compensation, or disability or unemployment insurance benefits or employee benefits of any kind. Contractor is not eligible to participate in any employee benefit or retirement plans offered by Agency or the State or Ohio. Agency shall withhold no payroll or employment taxes of any kind.
2. Contractor is solely responsible for all of Contractor's business expenses, including the payment or withholding of all federal, state and local income taxes, workers compensation insurance, social security and unemployment insurance, and the payment of wages and salaries, travel expenses, insurance of every kind, and health and retirement plans. Contractor shall indemnify and hold Agency harmless from and against any and all claims, demands, liabilities, losses, damages and expenses resulting in any manner from any act or omission of Contractor or its employees related to its obligation to pay and withhold income tax, social security, unemployment insurance and to maintain worker's compensation insurance.
3. Nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder on an independent contractor basis, that Agency shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.
4. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

SECTION I. RECORD KEEPING

1. Until the expiration of six (6) years after the termination of this Contract, Contractor will, upon proper request, allow the Comptroller General of the United States, the U.S. Department of Health and Human Services, the State of Ohio, the Ohio Medicaid Fraud Control Unit and the Ohio Department of Job and Family Services and their duly-authorized representatives access to Contractor's books, documents and records necessary to certify the nature and extent of costs of reimbursable services provided under this Contract. For each subcontract in excess of \$10,000, the Contractor shall require the subcontractor to agree to these record keeping provisions. If Contractor is requested to disclose any books, documents or records relevant to their Contract for the purpose of an audit or investigation by any government agency, Contractor shall immediately notify Agency of the nature and scope of the request and shall make available to Agency all books, documents and records relevant to the request.
2. All provisions under this section survive the expiration or termination of this Contract.

SECTION J. CONFLICTS OF INTEREST, ETHICS, AND LEGAL COMPLIANCE

1. No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Contract or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.
2. Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to Agency in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless Agency shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
3. Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2011-03K. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws and Executive Order.
4. Contractor represents and warrants that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.
5. Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.
6. Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either O.R.C. Section 153.02 or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.
7. Contractor hereby represents and warrants to Agency that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." Contractor further represents and warrants that it has provided or will provide such Declaration to Agency prior to execution of this Contract. If these representations and warranties are found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.
8. Contractor represents and warrants that neither it nor any of its employees or agents are excluded from participation under any Federal health care program, as defined under 42 U.S.C. Section 1320a-7b(D), for the provision of items or services for which payment may be made under a Federal health care program; Contractor has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent that Contractor knows is excluded from participation in any Federal health care program, and no final adverse action, as defined under 42 USC Section 1320a-7e(g) has occurred or is pending against Contractor or to its knowledge against any employee contractor or agent engaged to provide items or services under this Contract (collectively, "Exclusions/Adverse Actions"). Contractor shall notify Agency of any

Exclusions/Adverse Actions within five (5) business days of its learning of such Exclusions/Adverse Actions.

9. Contractor shall comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
10. Contractor warrants that it has not entered into, nor shall it enter into, other Contracts, without prior written approval of Agency, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other Contracts.
11. Contractor represents and warrants that neither it nor any of its employees or agents has been convicted of any offense set forth in Section 5123.081(E) of the Ohio Revised Code.
12. Contractor affirms that neither it nor any of its employees or agents is presently holding a civil service position with the State of Ohio. The Contractor (if an individual) declines a civil service position for the reason(s) identified below.
 - contractor is not an individual
 - not interested in benefits
 - not interested in civil service appointment
 - compensation and benefits is inadequate
 - other

SECTION K. NONDISCRIMINATION

1. Pursuant to O.R.C. Section 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, national origin, veteran status, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Contract.
2. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Contract on account of race, color, religion, sex, age, national origin, veteran status or disability.
3. Pursuant to Ohio Revised Code Section 125.111, Contractor shall maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of Administrative Services.
4. Contractor shall not discriminate in the provision of services on account of race, color, religion, sex, age, natural origin, veteran status or disability.

SECTION L. LIABILITY

1. Contractor agrees to indemnify and to hold Agency and the State of Ohio harmless and immune from any and all claims, costs and liabilities for injury or damages arising from this Contract which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Contract. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal

or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

OR – (select either the paragraph above or below – then delete the other and this note; use the paragraph below if contracting with another public agency, use the paragraph above for all other contracts)

1. Each party shall accept and be responsible for its own acts or omissions, as well as those of its employees discharging its obligations under this Agreement. Nothing in this Agreement shall be interpreted or construed to place any responsibility for acts or omissions of one party or its employees onto the other party.
2. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
3. Contractor shall purchase and maintain comprehensive general and professional liability insurance each in the minimum amount of \$1,000,000 per occurrence. Upon request, Contractor shall furnish Agency with a certificate of coverage.

SECTION M. COMPLIANCE WITH LAWS

1. Contractor, in the execution of duties and obligations under this Contract, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.
2.
 - a. The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. The Executive Order is provided as an attachment.
 - b. The Contractor also affirms, understands, and agrees to immediately notify Agency of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.
 - c. The Agency is not obligated and shall not pay for any services provided under this Contract that the Contractor or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and Contractor shall immediately return to the Agency all funds paid for those services. In addition, if the Contractor or any of its subcontractors perform any such services outside of the United States, the Agency may, at any time after the breach, terminate this Contract for such breach, upon written notice to the Contractor. If the Agency terminates the Contract, the Agency may buy substitute services from a third party, and the Agency may recover the additional costs associated with acquiring the substitute services.
 - d. If the Contractor or any of its subcontractors prepares to perform services, changes or shifts the location(s) of services performed by the Contractor or its subcontractors under this Contract to a location(s) outside of the United States, but no services are actually performed, the Contractor has 30 days to change or shift the location(s) of services performed to location(s) within the United States. The Agency may recover liquidated damages in the amount of 5% of the value of the contract for every day past the time permitted to change or shift the location(s).

SECTION N. CONFIDENTIALITY

1. Contractor agrees that all data, reports and information received from Agency shall be used only for the services to be provided under this Contract. Contractor agrees that

all discussions with Agency personnel and all reports prepared by Contractor are confidential. Contractor agrees to maintain the confidentiality of all such information and will not release such information without the prior written authorization of Agency.

2. Contractor IS or IS NOT a "business associate" pursuant to the definition under the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereunder specifically 45CFR160.03. If Contractor is a business associate then Contractor shall comply with Addendum A.
3. All provisions under this section survive the expiration or termination of this Contract.

SECTION O. ENTIRE CONTRACT/WAIVER

1. This Contract contains the entire Contract between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
2. This Contract supersedes any and all previous Contracts, whether written or oral, between the parties.
3. A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

SECTION P. NOTICES

All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon mailing and shall be sent to the addresses set forth below:

[Name]
DODD
[Title]
[Address]

[Name]
[Contractor Name]
[Title]
[Address]

SECTION Q. SEVERABILITY

The provisions of this Contract are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

SECTION R. CONTROLLING LAW

This Contract and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder.

SECTION S. SUCCESSORS AND ASSIGNS

Neither this Contract nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Contractor, without the prior written consent of Agency.

SECTION T. ACCESS TO PREMISES

Contractor acknowledges that all packages and bags brought into or taken from Agency premises may be subject to inspection by security, supervisory and management personnel. Video surveillance may also be used to assist in the protection of individuals, staff and property.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers, as of the day and year first written above.

[Name]
Ohio Department of Developmental Disabilities
Director

[Name]
[Contractor Name]
[Title]

By: _____

By: _____

Date: _____

Date: _____

[Name]
Ohio Department of Developmental Disabilities
Deputy Director

[Name]
Ohio Department of Developmental Disabilities
Superintendent (if applicable)

By: _____

By: _____

Date: _____

Date: _____

DEPARTMENT OF ADMINISTRATIVE SERVICES
STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Bidder/Offeror shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the Bidder/Offeror not responsive and no further consideration will be given to the response. Bidder/Offeror's offering will not be considered. If the Bidder/Offeror will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

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

(Address)

(Address, City, State, Zip)

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

(Name)

(Address, City, State, Zip)

ADDENDUM A
Business Associate Addendum

This Business Associate Addendum (the "Addendum") is entered into by and between the Ohio Department of Developmental Disabilities ("Agency") and Contractor.

Whereas, Agency and Contractor are parties to an agreement entered into contemporaneously herewith ("Underlying Agreement"); and

Whereas, Agency, pursuant to the Underlying Agreement, provides Contractor with certain individually identifiable protected health information that is necessary for Contractor to perform the services called for in the Underlying Agreement and is subject to protection under the Health Insurance Portability and Accountability Act of 1996("HIPAA") and the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164 ("Rules"); and Subtitle D of the Hitech Act, American Recovery and Reinvestment Act of 2009; and

Whereas, the parties purpose for entering into this Addendum is to comply with the requirements of applicable laws and regulations, including but not limited to HIPAA, Hitech, and the Rules.

NOW, THEREFORE, in consideration of the forgoing and the promises and mutual covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meaning as set forth in the Rules.
2. Duties and Responsibilities of Contractor:
 - A. Contractor acknowledges and agrees that all protected health information (the "PHI"), as defined by the Rules, provided to Contractor by Agency is confidential and the property of Agency without regard to medium of storage or method of transmission of such information. Contractor agrees to keep all PHI confidential.
 - B. Except as otherwise limited in this Addendum, Contractor may use or disclose PHI necessary to perform functions, activities, or services for, or on behalf of, Agency as specified in the Underlying Agreement or for the proper management and administration of Contractor, provided that such use or disclosure would not violate the Rules if done by Agency.
 - C. Contractor agrees to take reasonable steps necessary to protect the security and confidentiality of PHI so as to enable Agency to comply with HIPAA, Hitech, the Rules and other laws relating to the privacy and security of PHI, which are now in force or which may hereafter be in force, including, without limitation, the following actions:
 - (1.) use or disclose PHI only as permitted or required by the Underlying Agreement and this Addendum, or as Required by Law; and
 - (2.) use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Underlying Agreement and this Addendum; and
 - (3.) implement reasonable processes to detect unauthorized disclosures of PHI and train its work force regarding these processes; and

- (4.) to the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Underlying Agreement or this Addendum; and
 - (5.) promptly and in no case later than 10 days after discovery, report in writing to Agency any use or disclosure of the PHI not provided for by the Underlying Agreement or this Addendum, of which Contractor becomes aware. Contractor shall provide such other available information to Agency to enable it to notify individuals as required by Hitech; and
 - (6.) require any contractors or agents, including subcontractors, to whom Contractor provides PHI received from, or created or received by Contractor on behalf of Agency, to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum; and
 - (7.) make its internal practices (including policies and procedures), books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of Agency, available to the Secretary of the Department of Health and Human Services (the "Secretary") for purposes of determining Covered Entities compliance with the Rules. Contractor shall provide Agency with a copy of any PHI that Contractor provides to the Secretary concurrently with providing such PHI to the Secretary; and
 - (8.) within fifteen (15) days of receiving a written request from Agency, provide to Agency the information necessary for the Agency to make an accounting of disclosures of PHI about an Individual as necessary for Agency to comply with 45 C.F.R. 164.528; and
 - (9.) make available information necessary for Agency to respond to an Individual's request for access to PHI about them as is necessary for Agency to comply with 45 C.F.R. 164.524. Such information shall be made available within ten (10) ten days of receiving a written request from Agency for such information. In the event an Individual contacts Contractor, or its agents or subcontractors, directly requesting access to PHI, Contractor will not grant access to PHI but will notify Agency in writing within five (5) business days of such contact; and
 - (10.) within fifteen (15) days of receiving a written request from Agency, incorporate any amendments or corrections to PHI as necessary for Agency to comply with 45 C.F.R. 164.526. In the event an Individual contacts Contractor, or its agents or subcontractors, directly about making amendment to PHI, Contractor will not make any amendments to PHI but will notify Agency in writing within five (5) business days of such contact.
3. Security Rule Provisions. Contractor agrees to the following additional obligations in order that Agency may meet its obligations under HIPAA Security Rule, 45 C.F.R. Part 164, Subpart C, with respect to electronic PHI:
- A. Contractor will employ appropriate administrative, technical, and physical safe guards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Agency.
 - B. Contractor will Report to Agency any Security Incident of which it becomes aware.
 - C. Contractor will ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it.
4. Breach of Unsecured PHI. If Contractor discovers any Breach of Unsecured PHI (as the terms "Breach" and "Unsecured" PHI" or "Unsecured Protected Health Information" are defined in 45 C.F. R. 164.402) that it accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses on behalf of Agency, then in accordance with 45 C.F.R. §164.410, Contractor shall notify Agency of such Breach in writing without unreasonable delay and in no event later than ten (10) days

after discovery of such Breach, which written notice shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such Breach. In addition, Contractor shall provide Agency with the following information, to the extent available at the time initial notice to Agency is provided, or promptly thereafter as such information becomes available:

- A. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach.
 - B. A description of the type of PHI that was involved (e.g., name, Social Security Number, procedure, diagnosis, treatment, etc.).
 - C. A brief description of the steps that Contractor is taking to investigate, mitigate harm, and protect against further Breaches.
5. Termination. Agency may immediately terminate the Underlying Agreement, including this Addendum, by giving Contractor written notice of termination, if Agency determines that Contractor has violated a material term of this Addendum. Alternatively, Agency may in its sole discretion provide an opportunity for Contractor to cure the breach and end the violation. If Contractor fails to cure the breach to the satisfaction of Agency, the Agency may immediately thereafter terminate the Underlying Agreement. Termination of the Underlying Agreement shall result in the termination of this Addendum.

Contractor agrees that upon termination of the Underlying Agreement, it will return or destroy all PHI received from, or created or received on behalf of Agency, that Contractor still maintains in any form and retain no copies of such information. This provision shall apply to PHI that is in the possession of Contractor and any subcontractors or agents of Contractor. In the event that returning or destroying the PHI is infeasible, as determined by Agency, Contractor agrees to extend the protections of the Underlying Agreement and this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

6. Amendment. It is the intent of the parties that the Underlying Agreement and this Addendum comply with the requirements of HIPAA, Hitech, and the Rules. Any ambiguity in the Underlying Agreement or this Addendum shall be resolved to permit Agency to comply with HIPAA and the Rules. If necessary, the parties agree to use good faith efforts to amend the Underlying Agreement and this Addendum from time to time as is necessary for Agency to be in compliance with HIPAA and regulations promulgated thereunder.
7. Survival. The obligations of the Contractor under this Addendum shall survive the expiration or termination of the Underlying Agreement and this Addendum.
8. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall confer, upon any person other than the parties, and their permitted successors and assigns if any, rights, remedies, obligations or liabilities whatsoever.
9. Miscellaneous: As amended by this Addendum, the Underlying Agreement and all its terms and conditions shall remain in full force and effect.