Request for Proposal (RFP)

Issued by
Office of the Ohio Consumers' Counsel (OCC)
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Rate of Return Expert

RFP Number: 2016-25
Issued: December 23, 2015

REQUEST FOR PROPOSAL
TABLE OF CONTENTS

Organization. This Request for Proposal is organized into five parts as listed below:

	Page
Part 1: Executive Summary	3
Part 2: General Instructions	4
Part 3: Scope of Work and Deliverables	6
Part 4: Bid Requirements	8
Part 5: Evaluation of Bids	10

Attachment:
Affirmation and Disclosure Form Executive Order 2011-12K
Exhibit A – OCC's Contract Terms and Conditions

PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Proposal ("RFP") issued by the Office of the Ohio Consumers' Counsel ("OCC") to solicit bids from Independent Contractors for technical assistance to determine the appropriate rate of return, in Dayton Power & Light's (DP&L or "Utility") distribution rate case (Case No. 15-1830-EL-AIR).

Background. The OCC plays an integral part in Ohio's government and economy by fulfilling its role as the advocate agency for residential utility consumers. Established in 1976, the OCC's services for Ohio consumers include advocacy on their behalf on issues involving the affordability and quality of their utility services. OCC also provides education for consumers regarding their utility services.

The law governing the agency's activities is contained in Chapter 4911 of the Ohio Revised Code.

PART TWO: GENERAL INSTRUCTIONS

Calendar of Events. The schedule for this RFP and the work to be addressed is given below. The OCC reserves the right to change this schedule as needed.

Firm Dates	
RFP Issued:	**December 23, 2015**
Bid Due Date/Time:	**January 6, 2016 2:00p.m.**
Estimated Dates	
Contract Award:	**January 14, 2016**
Contract End Date	**June 30, 2017**
Estimated Budget	**$25,000**

If the Independent Contractor awarded a contract under this RFP has total contracts or anticipated expenditures during the current state fiscal year totaling $50,000 or more, the OCC will seek approval from the State of Ohio Controlling Board for the use of funds for the contract under this RFP. The timing of that approval is dependent on the dates for submission to the Board and the scheduled meeting of the Board.

Contact. The following individual will represent the OCC as the primary contact for matters relating to this RFP and any subsequent contract. All questions must be submitted in writing.

Robin Tedrick
Records Management Coordinator
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, Ohio 43215
E-mail: robin.tedrick@occ.ohio.gov

Proposal Submission. Proposals are to be mailed or delivered to: Robin Tedrick, Office of the Ohio Consumers' Counsel, 10 W. Broad Street, Suite 1800, Columbus, Ohio 43215-3485. Proposals can be sent via mail or e-mail to tedrick@occ.state.oh.us. The deadline to submit proposals for this RFP is ***January 6, 2016 @ 2:00 p.m.***

The OCC may reject any proposals or unsolicited proposal amendments that are received after the deadline. A prospective Independent Contractor that mails its proposal must allow for adequate mailing time to ensure its timely receipt.

Each prospective Independent Contractor must carefully review the requirements of this RFP and the contents of its proposal. All prospective Independent Contractor are on notice that the OCC will not be liable for any costs incurred by any prospective Independent Contractor in responding to this RFP, regardless of whether the OCC awards the contract through this process, decides not to go forward with the work, cancels this RFP for any reason, or contracts for the work through some other process or by issuing another RFP.

By submitting a proposal, the prospective Independent Contractor acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The prospective Independent Contractor also agrees that the contract will be the complete and exclusive statement of the agreement between the OCC and the Independent Contractor and will supersede all communications between the parties regarding the contract's subject matter.

The OCC may reject any proposal if the prospective Independent Contractor takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the prospective Independent Contractor's proposal fails to meet any requirement of this RFP. The OCC may reject any proposal that is not in the best interest of the OCC to accept. Further, the OCC may decide not to do business with any of the prospective Independent Contractors responding to this RFP.

All proposals and other material submitted will become the property of the OCC. Proprietary information should not be included in a proposal or supporting materials because all proposals will be treated as a public record and the OCC will have the right to use any materials or ideas submitted in any proposal without compensation to the prospective Independent Contractor.

Waiver of Defects. The OCC has the right to waive any defects in any bid or in the submission process followed by a prospective Independent Contractor. However, the OCC will only do so if it is in the best interest of the OCC and will not cause any material unfairness to other prospective Independent Contractors.

Amendments to Bids. Amendments or withdrawals of bids will be allowed if the amendment or withdrawal is received before the bid due date. No amendment or withdrawals will be permitted after the due date, except as expressly authorized by the OCC.

Amendments to the RFP. If the OCC decides to revise this RFP, amendments will be made available to all prospective Independent Contractors. When the OCC makes amendments to the RFP after bids have been submitted, the OCC will permit prospective Independent Contractors to withdraw or modify their bids.

Contract. If this RFP results in a contract award, the contract will include by reference this RFP, written amendments to this RFP, the prospective Independent Contractor's bid, and written, authorized amendments to the Independent Contractor's bid. It will also include any purchase orders and change orders issued under the Contract.

In addition, the prospective Independent Contractor will agree to abide by all laws, rules and directives of the State of Ohio, as they pertain to vendors doing business with the State of Ohio.

PART THREE: SCOPE OF WORK AND DELIVERABLES

This section describes the scope of work and what the selected Independent Contractor must deliver as part of the completed work (the "Deliverables") to meet the terms and conditions of a subsequent contract.

Scope of Work. The Independent Contractor will be fully responsible for the review, analysis and evaluation of all materials filed by the Utility and any other parties in the proceeding relating to the determination of the appropriate rate of return, in Case No. 15-1830-EL-AIR.

The Independent Contractor will also be responsible for the analysis and evaluation of rate of return background materials as may be provided by OCC, or identified by the Independent Contractor during the course of its review. The Independent Contractor will be expected to bring to its analysis substantial experience in evaluating all issues related to rate of return for the Utility.

Summary. On November 30, 2015 DP&L filed an application for an increase in its distribution rates in Case No. 15-1830-EL-AIR.

DP&L's last rate case was decided by the PUCO in 1992. In that case, the PUCO approved an unopposed stipulation that allowed DP&L to increase its rates by $129 million, over a three-year phase-in period, with an authorized rate of return of 10.93%.[1] DP&L's rates in the 1992 case were bundled rates for distribution, generation and transmission services. Under Ohio's 1999 electric restructuring law, DP&L's rates were unbundled in its electric transition plan case and its unbundled distribution rates were effective January 1, 2001.[2]

Work Requirements and Deliverables. The Independent Contractor shall undertake the following work and activities, as requested and approved by OCC, for the identification, analysis and development of issues related to the rate of return proposed by the Utility, the PUCO and other parties and the recommendation of appropriate rate of return for the Utility in the proceeding.

Deliverable 1

A. Review and prepare an analysis and critique of the Utility's proposed rate of return including a review of the Utility's Application, work papers and supporting testimonies.

B. Provide technical support on rate of return for the discovery process in the proceeding, including:
   a. Prepare discovery (interrogatories and requests for production of documents);
   b. Review responses to OCC's discovery;
   c. Attend depositions scheduled as required by OCC's Lead Attorney;
   d. As required, give deposition testimony; and
   e. Review discovery requests served upon the OCC by other parties and assistance in preparing OCC's responses to such discovery.

[1] See DP&L Case No. 91-414-EL-AIR, Order (January 22, 1992).
[2] See DP&L Case No. 99-1687-EL-ETP, et al., Order (September 28, 2000).

Deliverable 2

Review and prepare an analysis and critique of the PUCO Staff's proposed rate of return in the Staff Report of Investigation, work papers and supporting testimony, including preparation of objections to the Staff Report on the same or related issues. It is estimated that objections to the Staff Report will be issued approximately five months after the Utility files its application. Objections to the Staff Report, along with testimony, are due thirty days from the date the Staff Report is issued.

Deliverable 3

A. Recommend and calculate an appropriate rate of return for the Utility:
    1. Prepare written, direct and, if needed, rebuttal testimony and presentation of that testimony at the hearing;
    2. Testimony shall include the appropriate cost of debt, cost of equity and capital structure for the Utility and supporting schedules.

B. Review the information developed by, and the testimony of, any other consultants retained by OCC in order to coordinate the OCC's development of issues in this proceeding.

Deliverable 4

A. Provide technical support, as identified by OCC's Lead Attorney, for the legal preparation involved in the proceeding including an analysis of written and oral testimony of other witnesses (Utility, PUCO Staff and other parties) to assist with cross-examination.

B. Provide technical assistance needed for any pre-hearing or settlement conferences.

C. Provide technical assistance on the rate of return subsequent to the hearing in order to prepare post-hearing briefs and evaluate issues for possible rehearing and/or appeals including, but not limited to, evaluation of those and related issues in the PUCO's Opinion and Orders and, if requested, by OCC's Lead Attorney.

PART FOUR: BID REQUIREMENTS

Bid Format. Each bid must include sufficient data to allow the OCC to verify the total cost for the work and all of the prospective Independent Contractor's claims of meeting the RFP's requirements. These instructions describe the required format for a responsive bid. The prospective Independent Contractor may include any additional information it believes is relevant.

1. **Independent Contractor Profile.** Each bid must include a general profile of the prospective Independent Contractor's relevant experience working on projects similar to this work. In the **Independent Contractor Profile**, or in **Personnel Profile Summaries** (see below), details on prior and current similar and/or relevant work projects should be provided, including the scope of such work and clients. While detail is generally preferred on an Independent Contractor's most recent work, Independent Contractors are encouraged to provide detail on relevant work in Ohio.

   The profile must also include the prospective Independent Contractor's legal name, address, and telephone number; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); total number of employees nationwide and in Ohio; the percentage of women employees nationwide and in Ohio; the percentage of minorities nationwide and in Ohio; number of employees to be engaged in tasks directly related to the work; and any other background information the prospective Independent Contractor believes would be useful during the bid evaluation process.

2. **Work Plan.** The prospective Independent Contractor must fully describe its approach, methods, and specific work steps for doing the work and producing the **Work Requirements and Deliverables** set forth in Part Three of this RFP. The OCC encourages responses that demonstrate a thorough understanding of the nature of the work and what the Independent Contractor must do to get the work done well. The prospective Independent Contractor must also provide a complete and detailed description of the way it will do the work that addresses the areas of concern identified below. The OCC seeks insightful responses that describe proven, state-of-the-art methods. Recommended solutions should demonstrate the prospective Independent Contractor's ability to quickly undertake and successfully complete the required tasks.

   The prospective Independent Contractor's work plan **must clearly and specifically identify key personnel assignments, by individual, as to who would be addressing the deliverables set forth in Part Three of this RFP**.

3. **Personnel Profile Summaries.** Each bid must include a profile and/or resume that demonstrates the competency of the Independent Contractor by submitting the following information:

   - **Team Members Names**
   - **Experience and Qualifications**. Experience and qualifications relevant to this project.
   - **Dates of Employment.** The length of time the team members performed relevant work requiring the necessary technical expertise.
   - **Project Experience.** The work of the team members on projects of similar or greater size and scope.

4. **References.** The prospective Independent Contractor must include three references for which the prospective Independent Contractor has successfully provided services on projects that were

similar in their nature, size, and scope of work. These references must relate to work that was completed within the past five (5) years.

Note: Each reference must be willing to discuss the prospective Independent Contractor's performance with an OCC representative.

5. **Cost Summary.** **Each prospective Independent Contractor must provide a cost summary table showing: (1) Team Members' names, (2) their hourly rates, (3) their estimated hours, and (4) total estimated project cost for the Work Requirements and Deliverables set forth in Part Three of this RFP**.

   a) The OCC requires the inclusion of ALL expenses associated with this project within the hourly rates and hours used to determine the costs for the deliverables, thereby eliminating the need for expense billings. Items to be taken into consideration in determining the cost of each deliverable should include supplies and materials, transportation and per diems, copying and overnight mail charges, etc. The successful bidder will be responsible for direct payment to vendors for any requirements for overnight mail and any "on-site" photocopying charges.
   b) Independent Contractor may invoice only for actual work performed and documented.

6. The OCC will not be liable for any costs the prospective Independent Contractor does not identify in its bid.

7. The prospective Independent Contractor must complete the Standard Affirmation and Disclosure form attached to this RFP which addresses Executive Order 2011-12K, Governing the Expenditure of Public Funds on Offshore Services. This executive order states in part "...No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside of the United States..." 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 Independent Contractor and affirms that both the Independent Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. To access the executed Executive Order, please visit: http://procure.ohio.gov/pdf/EO201112K.pdf.

8. Submit an original W9 form along with your response to this RFP so that, if a contract is awarded, the OCC can process any invoices submitted by your company. The Internet link to the form is: http://www.irs.gov/pub/irs-pdf/fw9.pdf. The form must be signed and dated.

9. Submit a statement as part of your response to this RFP, affirming that you or members of your staff do not currently owe any money to the state of Ohio or have an unresolved finding for recovery from the Auditor of State as per Ohio Revised Code (ORC) 125.25. To access more information regarding ORC 125.25, please visit: http://codes.ohio.gov/orc/125.25.

10. **Campaign Contribution.** House Bill 694 requires that every contract for goods or services of more than $500 must contain a certification signed by the contract recipient certifying that the recipient is in compliance with ORC 3517.13 Divisions (I) or (J) regarding limitations on political contributions. If awarded a contract, the Independent Contractor will certify that they are in full compliance with these Divisions of ORC 3517.13. For more information, please refer to http://codes.ohio.gov/orc/3517.13.

PART FIVE: EVALUATION OF BIDS

Evaluation of Bids. Generally, the evaluation process may consist of up to four distinct phases:

1. The Initial Review of all bids for defects.
2. The Evaluation of the bids.
3. Request for More Information (Interviews, Presentations, and Demonstrations).
4. Negotiations.

It is within the purview of the OCC to decide whether phases three and four are necessary.

Initial Review. The bids will be reviewed for their timeliness, format, and completeness. Any late, incomplete, or incorrectly formatted bids may be rejected. Likewise, any defects may be waived or a prospective Independent Contractor may be allowed to submit a correction.

If a late bid is received, it will not be considered unless the prospective Independent Contractor has received prior OCC approval for a late bid for good cause shown.

Rejection of Bid. The OCC may reject any bid that is not in the required format, does not address all the requirements of this RFP, or that the OCC believes is excessive in price or otherwise not in the best interest of the OCC to consider or to accept. In addition, the OCC may cancel this RFP, reject all the bids, and seek to do the work through a new RFP or other means.

Clarifications: During the evaluation process, clarifications may be requested from any prospective Independent Contractor under active consideration and the clarification may give any prospective Independent Contractor the opportunity to correct defects in its bid. This may be done in cases where doing so would not result in an unfair advantage to the prospective Independent Contractor and the clarification is in the best interest of the OCC.

Contract Award. The OCC plans to tentatively award a Contract for this work on **January 14, 2016.** The OCC reserves the right to change the contract award date if it becomes necessary. The contract will be awarded to the Independent Contractor that demonstrates a clear understanding of OCC's expectations; can complete the scope of work and deliverables within the designated timeframe, and at the lowest or most competitive cost.

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 hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor 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 may subject the Contractor to sanctions. If the Contractor 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)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change in shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclose form and have read and understand that this form is a part of any contract that Contractor my enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

CONTRACT

I. GENERAL TERMS AND CONDITIONS

A. Performance Standards

1. The Independent Contractor declares that it is engaged as an Independent Contractor and has complied with all federal, state and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage that is required in the normal course of business, as well as any specialized insurance that is specified herein, that may be required to carry out its business and perform under the terms of this Contract for Professional Services. The Independent Contractor acknowledges as an Independent Contractor, OCC (hereinafter referred to as "Agency") will not make any contributions to the Ohio Public Employees Retirement System on his/her behalf. The Independent Contractor acknowledges and understands that it does not have any authority to sign agreements, notes and/or obligations or to make purchases and/or dispose of property for or on behalf of the Agency.

2. The Independent Contractor shall furnish professional services performed in accordance with applicable commercial standards necessary for the satisfactory performance of the work hereunder. Services shall be performed by the Independent Contractor and the Agency shall not hire, supervise or pay any assistants to the Independent Contractor in its performance under this Contract for Professional Services. The Agency shall not be required to provide any training to the Independent Contractor to enable it to perform services required hereunder.

3. The Independent Contractor shall furnish its own support staff, materials, tools, equipment and other supplies necessary for the satisfactory performance of the work hereunder, unless stated otherwise in the Deliverables, Scope of Work and Duties of Independent Contractor article. Neither the Independent Contractor nor its personnel shall, at any time or for any purpose, be considered as employees or agents of the Agency or the State of Ohio.

4. The Independent Contractor must complete the Standard Affirmation and Disclosure Form (see attached) which addresses Executive Order 2011-12K, Governing the expenditure of Public Funds for Off Shore Services. This

executive order states in part "...No public funds should be spent on services provided offshore..." By signing the Standard Affirmation and Disclosure Form, the Independent Contractor affirms that the Contractor and any of its subcontractors shall perform no services requested under this contract outside the United States. To access the executed Executive Order 2011-12K, Please visit: http://procure.ohio.gov/pdf/EO201112K/EO201112K.pdf.

5. The Agency may, from time to time as it deems appropriate, communicate specific instructions and requests to the Independent Contractor concerning the performance of the work described in this Contract for Professional Services. 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 said tasks by the Independent Contractor. The management of the work, including the exclusive right to control or direct the manner or means by which the work described herein remains with and is retained by the Independent Contractor. The Agency retains the right to ensure that the work of the Independent Contractor is in conformity with the terms and conditions of the Contract for Professional Services, as specified herein.

6. The Independent Contractor and the Agency shall determine the specific time periods required to perform the services to be provided under this Contract for Professional Services. The Independent Contractor retains discretion over its schedule when performing services on the premises of the Agency, subject to the Agency's normal business hours and security requirements.

7. The Independent Contractor shall not communicate with the media, (e.g. newspaper, television, social media or radio personality) regarding any Agency request for proposal, invitation to bid or contract the Independent Contractor has responded to or entered into. The Independent Contractor shall direct any and all inquiries received from the media to the Agency

B. Time of Performance

This Contract for Professional Services shall remain in effect until the work described herein is completed to the satisfaction of the Agency and the Independent Contractor is paid in accordance with the provisions of this Contract for Professional Services, or until terminated as provided herein, whichever is sooner. However, in any event, this Contract shall expire no later than _____. The work described in this Contract for Professional Services shall begin no earlier than the date of the signature by the parties. The Independent Contractor will not receive compensation for services performed after signing the Contract unless the Agency receives approval of this Contract by the Office of Budget and Management (Division of State Accounting). This Contract for Professional Services must be completed by _____ ***unless otherwise agreed to by the OCC.***

C. Related Agreements

1. The work contemplated in this Contract for Professional Services is to be performed by the Independent Contractor, unless otherwise noted in the Contract, who may subcontract without the Agency's approval for the purchase of articles, supplies, components or special mechanical services, that do not involve the type of work or services described in the Scope of Work and Duties of Contractor article, but which are required for its satisfactory completion. All work subcontracted shall be at the expense of the Independent Contractor.

2. The Independent Contractor shall, for each subcontract, require each subcontractor to agree to all of the provisions of this Contract for Professional Services. The Independent Contractor and subcontractors shall not agree to any provision which seeks to bind the Independent Contractor to terms inconsistent with, or at variance from, this Contract.

D. Conflicts Of Interest

1. No personnel of the Independent Contractor 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 for Professional Services, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Agency in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract for Professional Services, unless upon consultation with the Ohio Ethics Commission it is determined that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

3. Prior to the effective date of this Contract for Professional Services, the Independent Contractor must list all Ohio public utilities or public utility subsidiaries for which the Independent Contractor's firm or any members of the Independent Contractor's professional staff proposed for the project, has worked in a professional capacity during the past three years. For each firm listed, the Independent Contractor should describe briefly the nature of the professional relationship and the impact of the relationship upon the Independent Contractor's firm's ability to serve the Ohio Consumers' Counsel in an independent capacity. The Independent Contractor should also describe any other legal, professional or financial relationships between Ohio public utilities and any key members of the Independent Contractor's professional staff.

E. Equal Employment Opportunity

1. In carrying out this Contract for Professional Services, the Independent Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, disability, national origin, ancestry, veteran status, military status or any other factor specified in Section 125.111 of the Ohio Revised Code, in the Civil Rights Act of 1964, as amended, or in section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 104 Stat. 327,42 U.S.C. 12101, or any applicable state or federal law, rule or regulation or any applicable amendment thereto.

2. The Independent Contractor shall incorporate the foregoing requirements in all of its contracts for performance of any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

F. Suspension and Termination Provisions

1. If either party fails to perform any of the requirements of this Contract for Professional Services, or is in violation of a specific provision of this Contract for Professional Services, then the non-breaching party may suspend or terminate this Contract for Professional Services if the breaching party fails to cure such non-performance or violation within ten (10) business days following delivery of written notice of the breach; provided, however, that in the case of late payment by the Agency, Section 126.30 of the Revised Code shall apply and the Independent Contractor may not suspend or terminate this Contract for Professional Services hereunder unless such payment is more than sixty (60) days past due.

2. Upon providing written notice to the Independent Contractor, the Agency may suspend or terminate this Contract for Professional Services, in whole or in part, if the Independent Contractor failed to perform any of the requirements of this Contract for Professional Services; or that the Independent Contractor is in violation of a specific provision of this Contract for Professional Services; or if the Ohio General Assembly fails to appropriate funds for any part of the work contemplated under this Contract for Professional Services.

3. The Independent Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities, suspend or terminate all subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the 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 for Professional Services including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as the Agency may require.

4. In the event of suspension or termination under this Article, the Independent Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, in accordance with the Terms and Conditions of Payment, less any funds previously paid by or on behalf of the Agency. The Agency shall not be liable for any further claims, and the claims submitted by the Independent Contractor shall not exceed the total amount of consideration stated in this Contract for Professional Services. In the event of suspension or termination, any payments made by the Agency in which services have not been rendered by the Independent Contractor shall be returned to the State.

5. The Agency may at any time prior to the completion of services to be performed hereunder, suspend or terminate this Contract with or without cause upon thirty days prior written notice to the other party.

6. In the event this Contract is terminated prior to its completion, Independent Contractor shall deliver to the Agency all work products and documents which have been prepared by the Independent Contractor in the course of providing services under this Contract. Upon receipt and acceptance of the materials as defined in the contract, payment will be remitted to the Independent Contractor. All such materials shall become, and remain the property of, the Agency, to be used in such manner and for such purpose as it may choose.

G. Indemnification/Responsibility for Claims

The Independent Contractor agrees to indemnify, and shall hold harmless, the State of Ohio, the Agency, including without limitation, its employees, appointed officials, agents, and the Agency Governing Board, from any and all claims for injuries or damages arising from this Contract which are attributable to the Independent Contractor's own negligent actions or omissions, or those of its trustees, officers, employees, subcontractors, suppliers, and third parties directly under the Independent Contractor's control who are utilized by the Independent Contractor 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. Notwithstanding the foregoing, Independent Contractor shall indemnify and hold harmless the Agency and the State of Ohio for any judgments for infringement of patent or copyright rights and agrees to defend against any such claims or legal actions if called upon by the Agency to do so.

H. Compliance with Law

The Independent Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. The Independent Contractor and its employees are not employees of the Agency or the State of Ohio with regard to the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance

Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and for state revenue and tax laws, state workers' compensation laws and state unemployment insurance laws. The Independent Contractor accepts full responsibility for payment of all taxes, including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Independent Contractor in the performance of the work authorized by this Contract for Professional Services. The Independent Contractor shall be solely responsible for all fees, fines, penalties, and interest arising out of or in connection with any and all taxes and similar obligations as a result of this Contract. The Agency shall not be liable for any taxes under this Contract for Professional Services.

I. Limitation of Liability

Except with respect to personal injury or property damage, each party's liability for damages, whether in contract or in tort, shall not exceed the total amount of compensation payable to Independent Contractor under the Terms and Conditions of Payment or the amount of direct damages incurred by the Independent Contractor, whichever is less.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF THE OTHER PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, EACH PARTY SHALL BE LIABLE FOR ANY PERSONAL INJURY OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, CAUSED BY ITS FAULT OR NEGLIGENCE.

J. Change or Modifications

The Contract for Professional Services is incorporated herein by reference, and with this Exhibit B, Independent Contractor Acknowledgement Form and Standard Affirmation and Disclosure Form constitutes the entire agreement between the parties, and any changes or modifications to the agreement shall be made and agreed to in writing.

K. Assignment

Neither this Contract for Professional Services nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

L. Construction

This Contract for Professional Services shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the state of Ohio.

M. Certification of Compliance with Ohio Ethics Law Requirements for Noncompetitive Bid Agreements:

1. The Independent Contractor by signature on this Contract for Professional Services certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Sections 102.03 and 102.04 of the Revised Code. For more information please refer to: http://www.ethics.ohio.gov/OhioEthicsLaw.html.

N. Drug-Free Workplace

The Independent Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

O. Record Keeping Requirements:

1. The Independent Contractor shall keep all financial records in a manner consistent with generally accepted accounting procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located.

2. During the period covered by this Contract for Professional Services and until the expiration of three (3) years after final payment under this Contract for Professional Services, the Independent Contractor agrees to provide the Agency, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Independent Contractor involving transactions related to this Contract for Professional Services.

P. Campaign Contributions

The Independent Contractor hereby certifies that, as applicable to the Independent Contractor, all personal and business associates are in compliance with Ohio Revised Code 3517.13 Divisions (I) or (J) regarding limitations on political contributions and will remain in compliance for the duration of the Contract and with all applicable provisions that extend beyond the expiration of the Contract. For more information please refer to http://codes.ohio.gov/orc/3517.13.

Q. Sweatshop Free

The Independent Contractor shall comply with Executive Order 2008-29S, Sweatshop-Free. This Executive Order states in part "...Manufacturers and suppliers must provide work environments for their workers that adhere to all applicable laws." In signing this contract, the Independent Contractor certifies that all products or services offered are in

compliance with applicable domestic labor, employment, health and safety, environmental and building laws. To access the executed Executive Order, please visit: http://www.governor.ohio.gov/LinkClick.aspx?fileticket=wl6ykKBiEVg%3d&tabid=1493

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. Independent Contractor consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

II. TERMS AND CONDITIONS OF PAYMENT

A. The invoices that are provided to the Agency by the Independent Contractor shall indicate: The vendor/provider name and address, the work performed, the date(s) the work was performed, the applicable deliverable, the name and title of the person who performed the work, the number of hours, the hourly rate of the person who performed the work, the total amount to be paid, the remaining balance for the deliverable and the contract and purchase order number. The Independent Contractor is permitted to allocate the hours assigned to each deliverable above in a manner that allows them to achieve the highest efficiency possible, provided that the work performed does not exceed the total hours agreed to by the Agency.

B. The Independent Contractor is required to submit all invoices to the Agency along with a copy of a monthly work status report. An invoice is not proper if it contains a defect or impropriety. The Agency shall notify the Independent Contractor within fifteen (15) days, in writing, of the defect or impropriety and provide any information necessary to correct the defect or impropriety. Invoices shall be sent to:

Robin Tedrick
Records Management Coordinator
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
Robin.Tedrick@occ.ohio.gov

C. Section 126.30 of the Ohio Revised Code is applicable to this Contract for Professional Services and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month which equals one twelfth of the rate per annum prescribed by Section 5703.47 of the Ohio Revised Code.

D. Unless expressly provided for elsewhere in this Contract for Professional Services, the Independent Contractor shall be responsible for and assume all office and business expenses, including but not limited to insurance, that are incurred as a result of the performance of this Contract for Professional Services.

E. The Independent Contractor must complete a W-9 form in its entirety. At least one original W-9 form must be submitted prior to the effective date of this Contract for Professional Services.

F. The Independent Contractor agrees to comply with all applicable federal, state and local laws. Ohio Revised Code 9.24 prohibits any state agency from awarding a contract for services to any person against whom the Auditor of State has issued a finding of recovery, if that finding is unresolved. In signing this contract, the Independent Contractor certifies that all products or services offered are in compliance with Ohio Revised Code 9.24 and does not have an unresolved finding for recovery from the Auditor of State.

G. It is expressly understood by the parties that none of the rights, duties and obligations described in this Contract for Professional Services shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to the certification of balance statement in all contracts Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state agencies.

H. It is mutually understood by the parties that this Contract for Professional Services shall not be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations as required by Section 126.07 of the Ohio Revised Code.