REQUEST FOR PROPOSAL (RFP)

RFP NUMBER: EDUD201461200

DATE ISSUED: February 14, 2014

ELIGIBILITY: Universities and Colleges Only

The State of Ohio Department of Education is requesting Proposals for:

TITLE: Statewide Migrant Education Needs Assessment, Service Delivery Plan and Evaluation

INQUIRY PERIOD BEGINS:	**February 14, 2014**	
INQUIRY PERIOD ENDS:	**February 21, 2014**	**8:00 A.M. Eastern**
PROPOSAL DUE DATE:	**February 28, 2014**	**12:00 P.M. Eastern**
PROPOSAL OPENING DATE:	**March 3, 2014**	
ESTIMATED AWARD DATE:	**March 7, 2014**	

Section 1: Background

The United States Department of Education allocates Title I, Part C Migrant Education Program funds to Ohio through a statutory formula based primarily upon the state's migrant student count, the number of migrant children who receive summer and/or fall intersession services, and the cost of education in each state. The Ohio Migrant Education Program is implemented locally and regionally with services based on identified migrant student needs. While Migrant Education Program (MEP) funds are granted to the Ohio Department of Education (ODE), sub-grants are made to local operating agencies (school districts and Educational Service Centers, also known as (ESCs) to provide services. In addition, Ohio funds support the Ohio Migrant Education Center which provides technical support, identification and recruitment, record exchange, family involvement, and professional development. The University of Toledo offers migrant teacher professional development and offers a summer student weekend program for elementary and junior/senior high school students on college and career exploration.

Ohio's Migrant education programs operate during the summer and fall seasons at 11 different school centers that are primarily clustered in northwest Ohio where demand is highest for labor intensive farm work like picking apples, cucumbers and tomatoes. Currently Ohio's migrant child population is just under 2,000. Migrant education program throughout the state help ensure children who move around the country are not penalized by disparities among states in curriculum, academic content, achievement standards or graduation requirements.

Section 2: Objectives

The Ohio Department of Education requests proposals to conduct a statewide Comprehensive Needs Assessment (CNA), Service Delivery Plan (SDP) and Evaluation for services provided to migrant students and families, as required by Section 1304 and 1306 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, and by Code of Federal Regulations (CFR) Section 34 CFR 200.83, 200.84 and 200.85. The evaluation will identify trends in migrant student enrollment, outcomes, and service delivery, and make recommendations on improvements for the state's service delivery plan. The service delivery plan with the evaluation report shall be submitted to the Ohio Department of Education, Federal Program Office by June 30, 2015.

The written evaluation report must identify progress toward meeting the Ohio Migrant Education performance targets and measurable outcomes in the state's service delivery plan. The report must include the purpose of the evaluation, what data were collected, the findings of the implementation evaluation, results for Priority for Service (PFS) and other migrant students, and the implications for making decisions about MEP activities and services.

The general purpose of the Migrant Education Program (MEP) is to ensure that migrant children fully benefit from the same free public education provided to other children. To achieve this purpose, the MEP helps State Educational Agencies and local operating agencies address the unique educational needs of migrant children to better enable migrant children to succeed academically. Program funds are used to identify eligible children and provide education and support services. More specifically, the purposes of the MEP are to:

• Support high-quality and comprehensive educational programs for migrant children in order to reduce the educational disruption and other problems that result from the migrant life style;
• Ensure that migrant children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards;
• Ensure that migrant children are provided with appropriate educational services (including supportive services) that address their needs in a coordinated and efficient manner;
• Ensure that migrant children receive full and appropriate opportunities to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet;
• Design programs to help migrant children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit their ability to do well in school, and to prepare them to make a successful transition to postsecondary education or employment; and
• Ensure that migrant children benefit from State and local systemic reforms.

Elementary & Secondary Education Act, Title I, Part C, Section 1301-1309

The contract will provide the state with a Comprehensive Needs Assessment (CNA) and updated Service Delivery Plan (SDP) for the statewide Migrant Education Program support by Title I-C, Migrant Education funding. Some work will need to be performed by on-site observation at MEP program sites. Ohio's migrant education programs operate during the summer and fall seasons at 11 different school centers that are primarily clustered in northwest Ohio.

Section 3: Overview of the Scope of Work

The review includes three phases: 1) Conduct a comprehensive needs assessment of Ohio's Migrant Education Programs. The pre and post data will be collected by the migrant education school centers instructional staff and provided to the Ohio Department of Education. The ODE Migrant Education Coordinator will provide the contractor with the pre and post test data; 2) Based upon the data collected provide an evaluation which includes recommendations on improvements to assist migrant children achieve the state's measurable outcomes and performance targets in reading and mathematics. The pre and post data will be collected by the migrant education school centers and provided to the Ohio Department of Education. The evaluation report will determine the extent to which the measurable outcomes for the MEP /family literacy, proficiency in reading, proficiency in mathematics, and graduation from high school/alternative diploma have been implemented and achieved. 3) Based upon the findings from the evaluation and data provided from the ODE Migrant Education Coordinator and Director of the Ohio Migrant Education Center, complete the FY15 State Service Delivery Plan which includes key findings from the review.

Throughout the entire project the Contractor will work collaboratively with the ODE Migrant Education Coordinator and Federal Program Staff (meeting once a month or more frequently with the ODE Migrant Education Coordinator and evaluation team) and keep the agency up to date on the status of deliverables, preliminary findings, and suggested revisions to the State Delivery Plan. The Contractor will present an analysis of the evaluation data to assist the service delivery committee in evaluating state performance targets in relation to the Ohio Service Delivery Plan.

Section 4: Contractor Qualifications

Public institutions of higher education that provide research and evaluation services are qualified to submit proposals for this contract. Applicants must demonstrate knowledge of high-quality, scientifically-based research on instruction, educational leadership, and school improvement, as well as expertise in education measurement. All proposed submissions must include a minimum of three references for organizations and/or clients for whom the Offeror has successfully provided services within the last four years. The projects must be similar in nature, size, or scope to the project defined in this RFP. The Offeror must provide detail on who will assume the responsibilities of the contract manager, as well as resumes describing the education and work experiences of each key staff member who would be assigned to this project. The Offeror must provide a staffing plan that identifies all personnel required to do the project and their responsibilities on the project. ODE will fund one award. The project will begin after final contract negotiations are complete and funding is approved. The contract will end June 30, 2015.

Section 5: Special Work Information

Contractor must avoid apparent and actual conflict of interest when conducting the Statewide Migrant Education Needs Assessment, Service Delivery Plan and Evaluation. The contractor is not eligible to apply for the grant if they currently maintain a business relationship with the Ohio Migrant Education Center or any of the Title I-C Migrant Education grant recipients. Grant reciepients include: Bettsville Local Schools, Eastwood Local Schools, Fremont City Schools, Lakota Local Schools, Leipsic Local Schools, Marlington Local Schools, Northwest Ohio Education Service Center, Old Fort Local Schools, Putnam County Education

Service Center, Tecumseh Local Schools, The University of Toledo, Williard City Schools and Woodmore Local Schools.
The Contractor will be responsible for all travel expenses and/or transportation charges incurred as a result of the awarded contract.

Section 6: Contract Terms and Conditions

The successful offeror(s) will be required to enter into a contract with the Ohio Department of Education. Responding to this RFP shall be deemed as acceptance of the terms and conditions specified in the sample contract below. Offerors are advised to review the terms and conditions in the sample contract carefully.

Section 7: Inquiry

All questions regarding this RFP should be submitted online only. Accordingly, the Department will post responses online so that interested vendors may access and share the same information. (**Note:** Inquiry function is not available after 8:00 A.M. Eastern on the specified closing date for inquiry. The system shuts down early to allow time to process responses.)

Section 8: Submission Information

Proposals must reference the RFP number above and should be submitted:
Either by email to:

Name: Loretta Brown
Email Address: ray.draghi@education.ohio.gov

Please also email a copy to:

Name: Amadu Sankoh, Agency Procurement Officer
Email Address: **Amadu.sankoh@ode.state.oh.us**

OR by Regular mail to:

Name: Loretta Brown

Address: Ohio Department of Education
Office of Federal Programs
Office Federal Programs, MS404
Columbus, Ohio 43215

Please also mail a copy to:

Amadu Sankoh, Agency Procurement Officer
25 South Front Street, Mail Stop G
Columbus, OH 43215

Do Not Write Below this Line – Vendor Guidance Only

Proposal Format (For Vendor Response)

Signed Cover Letter (Required – as acceptance of all the terms of this RFP)

Work Plan (Required – Must Reference RFP Number on cover page)

Cost Summary (Required – Specify pricing for each deliverable per Work Plan)

Offeror Profile: (Optional, unless specifically required)

Staffing Plan for Work Plan in 3(A): (Optional, unless specifically required)

STANDARD AFFIRMATION AND DISCLOSURE FORM (**Required**)

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.

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 Sub-contractor(s):

(Name)	(Address, City, State, Zip)
(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 or 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 Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

OTHER IMPORTANT INFORMATION FOR VENDORS:

The State may reject any Proposals or unsolicited Proposal amendments that are received after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. Offerors must also allow for potential delays due to increased security. The State may reject late Proposals regardless of the cause for the delay.

The State may reject any Proposal if the offeror takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the offeror's Proposal fails to meet any requirement of this RFP. The State may also reject any Proposal that it believes is not in its interests to accept and may decide not to do business with any of the offerors responding to this RFP.

By submitting a Proposal, the offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The State is not responsible for the accuracy of any information regarding this RFP that was gathered through a source different from the inquiry process described in this RFP.

The State will not be liable for any costs incurred by any offeror in responding to this RFP, even if the State does not award a contract through this process. The State may decide not to award a contract for the work. The State may also cancel this RFP and contract for the work through some other process or by issuing another RFP.

Ohio Revised Code (ORC) Section 9.24 prohibits the State from awarding a contract to any offeror(s) against whom the Auditor of State of Ohio has issued a finding for recovery if the finding for recovery is "unresolved" at the time of award. By submitting a proposal, the offeror warrants that it is not now, and will not become subject to an "unresolved" finding for recovery under ORC 9.24, prior to the award of any contract arising out of this RFP, without notifying the Agency of such finding.

All proposals and other materials submitted will become the property of the State and may be returned only at the option of the State. Proprietary information should not be included in a proposal or supporting materials because the State will have the right to use any materials or ideas submitted in any proposal without compensation to the offeror. Additionally, all proposals will be open to the public after a contract has been awarded. The State will retain all proposals, or copies of the proposals, as part of the contract file for at least three years. After the retention period, the State may return, destroy, or otherwise dispose of the proposals or copies of the same.

The following is a sample contract which shall be signed between the Department and the selected vendor:

CONTRACT FOR PERSONAL SERVICES

I. AGENCY AND VENDOR INFORMATION

This agreement is made by and between the State of Ohio, Department of Education, 25 S. Front Street, Columbus, OH 43215, hereinafter termed the "Department" and Contractor Name**,** Street address Suite #, City, State, Zip Code, and **OAKS Vendor ID** 0000000000, hereinafter termed the "Contractor."

II. SERVICES, DISCLOSURE OF LOCATION OF SERVICES AND DATA

The Contractor agrees to provide the following services at Street address Suite #, City, State, Zip Code, Country; and state Data applicable to this contract will be maintained or made available at (Street address Suite #, City, State, Zip Code, Country/ no state Data is applicable to this contract):

Detailed services to be provided by the vendor here

During the performance of this contract, the Contractor shall not change the location(s) of the country where services are performed, or change the location(s) of the country where the data are maintained or made available without prior written approval of the Department, if applicable.

III. EFFECTIVE DATE

This contract is effective beginning upon approval by the Controlling Board / or July 1, 2XXX and ends on June 30, 2XXX. The provisions of this contract are not valid and enforceable until the availability of funds is certified by and approved by the Office of Budget and Management, in accordance with Chapters 126.07 and 131.33 of the Ohio Revised Code. The Department is not obligated to pay for services performed prior to such OBM certification.

IV. CONTRACT RENEWAL

At the sole option of the Department, this contract may be renewed, under the same terms and conditions for an additional period not to exceed twenty-four (24) months; but, such renewal may not extend beyond the state biennium in which the renewal takes place. In order to exercise this option, the Department shall advise the Contractor, in writing, at least sixty (60) days prior to the expiration of the existing contract.

In accordance with Section 126.07 of the Revised Code of Ohio, any renewal hereunder shall not be valid or enforceable, unless and until the Director, Office of Budget and Management first certifies that there is a balance in the appropriation, not already obligated to pay existing obligations.

The Department of Education reserves the right to reject any and all proposals where the offeree takes exception to the terms and conditions or fails to meet the terms and conditions, including, but not limited to, standards, specifications and requirements.

In addition, the Department of Education reserves the right to reject, in whole or in part, any and all responses if any of the following circumstances are true:
(A) Bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the bid document,
(B) The price of the lowest responsive and responsible bid is deemed excessive in comparison with market conditions or with the Department's available funds, or
(C) The Department determines that awarding a contract is not in the best interest of the state of Ohio.

V. TERMINATION, SUSPENSION, REDUCTION OF SCOPE OF WORK, AND REMIDIES

1. Contract Termination. If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the Department may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the Department.

a. Termination for Default. If Contractor's default is unable to be cured in a reasonable time, the Department may terminate the Contract by written notice to the Contractor.

b. Termination for Unremedied Default. If Contractor's default may be cured within a reasonable time, the Department will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the Department may terminate the Contract.

c. Termination for Persistent Default. The Department may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the Department has notified Contractor of its third default, the Department may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in any way.

d. Termination for Endangered Performance. The Department may terminate this Contract by written notice to the Contractor if the Department determines that the performance of the Contract is endangered through no fault of the Department.

e. Termination for Financial Instability. The Department may terminate this Contract by written notice to the Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.

f. Termination for Delinquency, Violation of Law. The Department may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, Department or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a Department agency or political subdivision. The Department also may cancel this Contract, if it

determines that Contractor has violated any law during the performance of this Contract. However, the Department may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.

g. Termination for Subcontractor Default. The Department may terminate this Contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Department for any liability to them.

Subcontractors will hold the Department harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.

h. Termination for Failure to Retain Certification. Pursuant to section §125.081 of the Revised Code, the Department may set aside a bid for supplies or services for participation only by minority business enterprises (MBE's) as certified by the Department of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Contractor to maintain certification as a MBE. If the Contractor fails to renew its certification and/or is de-certified by the Department of Ohio, Equal Opportunity Coordinator, the Department may immediately cancel the Contract.

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

j. Termination for Loss of Funding. This contract may be terminated immediately in the event there is a loss of funding, or upon discovery of non-compliance with any applicable Federal or Department laws, rules or regulations, and a notice specifying the reasons for termination shall be sent as soon as possible after the termination to the persons signing this contract. Upon receipt of the notice of cancellation or termination, the Contractor shall take all necessary and appropriate action to avoid the incurrence of additional costs by the Contractor or sub-Contractors. The Department shall be obligated to pay in accordance with the terms of this contract for only those services rendered under the contract prior to the Contractor's receipt of the notice of termination or cancellation, less any amounts already paid for such services and less any damages that may be assessed by the Department for Contractor's nonperformance or unsatisfactory performance under the contract.

k. Reduction of Scope of Work. The Department reserves the right to reduce the outstanding balance of this contract in accordance with reduction in the scope of work or funding or both. Written notice of such reduction including the dollar amount of the reduction and the specific activities being cancelled shall be sent or otherwise delivered to the persons signing this contract.

l. Termination, Effectiveness, Contractor Responsibilities. The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the Department. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the Department at the time of termination. Any and all work, whether completed or not, will be delivered to the Department along with the specified report. However, if delivery in that manner would not be in the Department's interest, then the Contractor will propose a suitable alternate form of delivery.

2. Contract Suspension. If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the Department may suspend rather than terminate this Contract where the Department believes that doing so would better serve its interest.

In the case of a suspension for the Department's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the Department's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the Department resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the Department as is required in the case of termination.

3. Contract Remedies:
a. Actual Damages. Contractor is liable to the Department of Ohio for all actual and direct damages caused by Contractor's default. The Department may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The Department may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

b. Liquidated Damages. If actual and direct damages are uncertain or difficult to determine, the Department may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.

c. Deduction of Damages from Contract Price. The Department may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice to being issued to the Contractor by the Department.

VI. COMPENSATION

In recognition of these services, the Department agrees to pay the Contractor a lump sum of $00,000.00 upon completion or $00.00 per hour or per deliverable completed as detailed above,

not to exceed $00,000.00 for services. Travel expenses shall not be reimbursed under this contract pursuant to Ohio Administrative Code, OAC 126-1-02(G). The total amount of the contract shall not exceed $00,000.00 in FY XXXX and $00,000.00 in FY XXXX.

VII. INVOICING, PAYMENT AND OTHER PROVISIONS

Payment shall be made upon the submission of an invoice approved by Department employee coordinating this service. Invoices shall include itemization of services by date services were provided, number of hours worked or deliverables completed, the rate per hour or the price per deliverable completed, and the amount due. The final invoice under this contract will be submitted by the Contractor to the Department no later than forty-five (45) days after the Contract expiration date or after the end of each state fiscal year, if the contract is in effect for multiple years.

VIII. UNRESOLVED FINDINGS FOR RECOVERY

The Department shall not award a contract for goods, services, or construction, paid for in whole or in part with State funds, to any Contractor against whom a finding for recovery has been issued by the auditor of state, if the finding for recovery is unresolved, pursuant to the provisions of § 9.24 of the Ohio Revised Code. Contractor warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. § 9.24. If the warranty is deemed to be false, the contract is void *ab initio* and the Contractor must immediately repay to the State any funds paid under this contract. If the Contractor does have any unresolved finding(s) for recovery subsequent to the award of this contract, the Contractor must immediately notify the Department of such finding(s).

IX: SUSPENSIONS AND DEBARMENTS

State agencies are prohibited from awarding a contract for supplies or services, funded in whole or in part with federal and/or state funds, to a business or person who appears on any debarment list. Current lists include but are not limited to the: (1) Federal List of Excluded Parties Listing System, located at http://www.epls.gov/, and (2) Ohio Department of Transportation Debarred List, Located at http://dot.state.oh.us, under Divisions, and then Contract Administration. If the Contractor appears on any of these debarment lists or other lists established by a Federal, State, or local government agency subsequent to the award of this contract, the Contractor shall immediately notify the Department of such development(s).

X. DISCRIMINATION AND AFFIRMATIVE ACTION PLAN

The Department does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability on employment or in providing services. The Contractor agrees to abide by State and applicable Federal nondiscriminatory policies while performing services under this contract, including Ohio Revised Code § 125.111(B), which provides that "all" Contractors from whom the state or any of its political subdivisions make purchases shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as referred to in division (E) (1) of Section 122.71 of the Revised Code.

Annually, each such Contractor 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. Accordingly, the Contractor has submitted an affirmative Action Program Verification Form to the Equal Opportunity Division located at http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx to comply with the affirmative action requirements pursuant to the Ohio Revised Code § 125.111(B).

XI. PURCHASE, USE OR TRANSFER OF ILLEGAL SUBSTANCES

The Contractor certifies that while working on state property, the Contractor will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way pursuant to § 123:1-76-12 of the Ohio Administrative Code.

XII. CONTRACTOR RELATIONSHIP TO AGENCY

The Contractor and/or Contractor's employees will not be considered as an employee of the state of Ohio or the Department for all purposes, including but not limited to the application of the Fair Labor Standards Act, Social Security Act, Federal Unemployment Tax Act, Federal Insurance Contribution Act, the provisions of the Internal Revenue Code, Ohio tax law, workers' compensation law and unemployment insurance law.

XIII. WORKER'S COMPENSATION COVERAGE

The Contractor is not entitled to Worker's Compensation or other employee benefits offered by the Department. It is strongly advised that the Contractor obtain independent Worker's Compensation coverage. The Department will not be held liable for injuries received while working because of the negligence of the Contractor or third party.

XIV. INDEPENDENT ENTERPRISE

The Contractor agrees that it is a separate and independent enterprise from the state and from the Department. The Contractor has a full opportunity to find other business and has made an investment in its business. This contract is not to be construed as creating any joint employment relationship between the Contractor and/or Contractor's employees and the Department or the State of Ohio.

Prior to providing any services under this contract, or within 30 days after services under this Contract begin, the Contractor shall acknowledge on a form provided by the Department, that the Contractor has been informed that the Department does not consider the Contractor a public employee and that the Department will not make any contributions to the Ohio Public Employees Retirement System (OPERS) for the personal services the Contractor provides to the Department under this contract. The Department reserves the right to cancel this contract if such written acknowledgment is not received in due time.

XV. OHIO ETHICS LAW

The Contractor certifies that, if the Contractor is a member of any other state agency, an employee or elected official of any other governmental body or a former employee of the state of Ohio, the acceptance of this contract will not violate the provisions of the Ethics law pursuant to § 102 of the Ohio Revised Code.

The independent Contractor hereby certifies that all applicable parties are in compliance with Divisions (I) and (J) of Ohio Revised Code § 3517.13.

XVI. EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES: REQUIREMENTS, TERMINATION, SANCTION, DAMAGES

The Contractor affirms that it has 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 Contractor also affirms, understands, and agrees to immediately notify the State 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.

If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of at least **ten percent** of the value of the Contract.

The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

XVII. ASSIGNMENT OF RIGHTS

Neither this contract, nor any rights, duties nor obligations described herein shall be assigned by the Contractor without the prior express written consent of the Department.

XVIII. APPLICABLE LAWS

The terms and conditions of this contract shall be construed in accordance with the applicable laws and rules of the State of Ohio and the United States, and only Ohio courts shall have jurisdiction over any action or proceeding concerning this contract and/or performance thereunder.

In Witness whereof, the parties have caused this agreement to be executed

Signature: _____ Date: _____

Contractor Name
Contractor

Signature: _____ Date: _____

Richard A Ross, PhD
Superintendent of Public Instruction