



Development Services Agency

INVITATION TO BID (ITB)

The Original Signed Bid must be submitted to the Budget and Finance Office to receive consideration for award.

BIDDER NAME

BID NUMBER
DEV13OSB01

OPENING DATE (2:00p.m.)
May 31, 2013

STREET ADDRESS

Ohio Development Services Agency
Budget and Finance Office
77 S. High Street, 29th Floor
Columbus, OH 43215
Attn: David Jende, Agency Procurement Officer

CITY STATE ZIP

COUNTY MBE/EDGE CERTIFICATE NUMBER

TELEPHONE NO.
() TOLL FREE NO.
1-()

CONTACT PERSON FAX NO.
()

ISSUE DATE
May 20, 2013

CONTRACTOR'S E-MAIL ADDRESS

SELECT YOUR PREFERRED METHOD OF RECEIVING PURCHASE ORDERS AND ENTER THE E-MAIL OR FAX NUMBER INFORMATION (ONLY SELECT ONE METHOD)

E-mail

Fax

MBE SET-ASIDE OPPORTUNITY

THIS IS A SET-ASIDE ITB FOR BIDDING BY MINORITY BUSINESS ENTERPRISES CERTIFIED BY THE STATE'S EQUAL EMPLOYMENT OPPORTUNITY COORDINATOR IN ACCORDANCE WITH RULES ADOPTED UNDER DIVISION (B)(1) OF SECTION 123.151 OF THE OHIO REVISED CODE. ONLY BIDS SUBMITTED BY CERTIFIED MBE VENDORS WILL BE CONSIDERED FOR AWARD.

The Ohio Development Services Agency (DSA), Small Business Office, is soliciting bids for:

Technical Support for videos, DVD's, webinars, and CD production for Marketing Activities pertaining to the Entrepreneurship and Small Business Division.
(SEE SPECIFICATIONS FOR DETAILED REQUIREMENTS)

The following documents apply to this bid:

- Required Certification for Bidding (Page 2) - Must complete & return with response to receive domestic and Ohio preference.
General Instructions
Specifications
Governor Executive Order 2011-12K "Governing the Expenditures of Public Funds for Offshore Services"
Executive Order 2011-12K Affirmation and Disclosure Form - Must complete & return with response.
Sample Agreement for Services - Upon award the contractor will be required to sign such an agreement.

Any questions or clarifications regarding this ITB should be submitted through the State Procurement website at www.ohio.gov/procure following the procedures outlined in the "General Instructions" section of the ITB.

The original signed bid must be submitted to the Agency Procurement Officer by 2:00 p.m. on the above listed opening date to receive consideration for award. It is requested that the Bidder sign their bid in blue ink. Bidder certifies, by signature affixed to its bid, that the information provided by it in its bid, including the Required Certification for Bidding, is accurate and complete. Bidder declares to have read and understood all of the instructions, terms, conditions and specifications of this ITB and agrees to fulfill the requirements of any awarded contract at the prices bid.

PRINTED/TYPED SIGNATURE

AUTHORIZED SIGNATURE (ORIGINAL SIGNATURE ONLY)

DATE

REQUIRED CERTIFICATION FOR BIDDING

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

A. DOMESTIC PREFERENCE (BUY AMERICA): [Not applicable to "[Excepted Products](#)"]

1. Where is each product/services being offered mined, raised, grown, produced or manufactured?
 - United States: _____(State) Canada Mexico [\(Go to B-1\)](#)
 - Other: (Specify Country)_____ [\(Go to A-2\)](#)

2. End product is manufactured outside the United States and at least 50% of the cost of its components are produced, mined, raised, grown or manufactured within the United States. The cost of components may include transportation costs to the place of manufacture and, in the case of components of foreign origin, duty whether or not a duty free entry certificate is issued.
 - Yes (Go to Section B-1) No (Go to Section A-3)

3. The Bidder hereby certifies that each end product, except the products listed below, is a domestic source end product as defined in the Buy America Act and that components of unknown origin have been considered to have been mined, produced, grown or manufactured outside the United States.
 - _____ (Item) _____ (Country of Origin)
 - _____ (Item) _____ (Country of Origin)

A domestic end source product is deemed to be excessively priced if it exceeds the cost of the foreign product by more than 6%. Pursuant to FAR, Part 25, the state of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The contractor, their subcontractor(s) and any agent of the contractor or subcontractor must not acquire any supplies or services originating from sources within, or that were located in or transported from or through Cuba, Iran, Iraq, Libya, North Korea, Sudan Territory of Afghanistan controlled by the Taliban, or Serbia (excluding the territory of Kosovo).

B. OHIO PREFERENCE (BUY OHIO):



1. The products/services being offered are raised, grown, produced, mined or manufactured in Ohio.
 - Yes ([Go to C](#)) No ([Go to B-2](#))

2. Bidder has significant economic presence within the state of Ohio.
 - Yes ([Answer a, b, c, d below](#)) No ([Go to B-3](#))
 - a) Bidder has paid the required taxes due the state of Ohio Yes No
 - b) Bidder is registered with the Ohio Secretary of State
 - Yes (Charter/Registration No.: _____) No
 - Questions regarding registration should be directed to (614) 466-3910 or visit their web site at: <http://www.sos.state.oh.us/>
 - c) Bidder has ten or more employees based in Ohio or border state. Yes No ([Go to B-2d](#))
 - d) Bidder has seventy-five percent or more employees based in Ohio or border state.
 - Yes No ([Go to B-3](#))

3. Border state bidder:
 - Yes (Specify which state then go to B-2c): KY MI NY PA IN No ([Go to B-4](#))

4. Border state bidder: mined products mined in respective border state Yes No Not Applicable

C. E.D.G.E. DESIGNATION

Bidder is certified E.D.G.E. business Yes No

For information on E.D.G.E. designation, please visit the DAS Equal Opportunity Division website at: <http://www.das.ohio.gov/Divisions/EqualOpportunity/tabid/80/Default.aspx>

GENERAL INSTRUCTIONS

The following sections provide a calendar of events, details on how to respond to this ITB and how to get more information about this ITB. All responses must be complete and in the prescribed format.

Calendar of Events

The schedule for this ITB is given below and is subject to change. DSA may change this schedule at any time. If DSA changes the schedule before the opening date, it will do so through an announcement on the State Procurement web site area for this ITB. The web site announcement will be followed by an addendum to this ITB, which will also be made available through the State Procurement web site. It is each prospective bidder's responsibility to check the web site question and answer area for this ITB for current information regarding this ITB and its calendar of events through award of the ITB. No contact shall be made with DSA until award is announced.

Firm Dates

ITB Issued:	May 20, 2013
Inquiry Period Begins:	May 20, 2013
Inquiry Period Ends:	May 28, 2013 at 8:00 a.m.
Bid Opening Date:	May 31, 2010 at 2:00 p.m.

Estimated Dates

Issuance of Purchase Order: July 1, 2013, or first available date thereafter.

Bid Submittal

Bidders are advised there will be no opportunity to correct mistakes or deficiencies in their bids after the opening date. Bids that are missing required information may not be evaluated, and it is at the discretion of DSA to make that determination.

It is the Bidders responsibility to ensure timely submission of a complete bid package. DSA is under no obligation to consider a bid which is received after the deadline or that is incomplete. Bids that are not submitted in the format requested will not be evaluated. Late bids will not be evaluated.

No supplementary or revised materials will be accepted after the opening date unless specifically requested by DSA.

All costs incurred in the preparation of the bid shall be borne by the bidder alone, and DSA shall not contribute, in any way, to the cost of the preparation of the bid.

Any and all documents developed by the selected vendor(s) during the course of this project will be provided to DSA upon request and will become the property of DSA, and the selected vendor(s) shall not assert any claims arising under copyright or otherwise inconsistent with the transfer of ownership of such documents.

All information submitted in response to this bid shall be public information unless a statutory

exception exists which would protect the information from release to the public. Any information submitted with the bid which the bidder treats as a trade secret, as that term is defined in Section 1333.61 of the Ohio Revised Code, may be designated as such by marking the information: two asterisks (**) must be placed at the beginning and end of the trade secret information and the trade secret information shall be underlined. Information determined to be a trade secret under the laws of the State of Ohio will be protected as trade secrets by DSA in accordance with Ohio law.

DSA reserves the right to:

- Accept or reject any and all bids if the State of Ohio determines that it is in its best interest to do so; and rebid the ITB requesting new bids from qualified parties.
- Waive or modify minor irregularities in bids received;
- Fund any bid in full or in part.
- Not make an award at the end of the evaluation process.
- Adjust the dates for whatever reason it deems appropriate.

In accordance with federal and state statutes and DSA policy, no person shall be excluded from participation or subject to discrimination in the bid process on the basis of race, color, age, sex, national origin, military status, religion, or disability.

Inquiries

Prospective bidders may make inquiries or seek clarifications regarding this ITB any time during the inquiry period listed in the ITB Calendar of Events. To make an inquiry, prospective bidders must use the following process:

1. Access the State Procurement web site at <http://www.ohio.gov/procure>;
2. From the Navigation Bar on the left, select "Find it Fast";
3. Select "Doc/Bid/Schedule #" as the Type;
4. Enter the Bid Number found on Page 1 of this document;
5. Click the "Find It Fast" button;
6. On the document information page, click the "Submit Inquiry" button;
7. On the document inquiry page, complete the required "Personal Information" section by providing:
 - a. First and last name of the prospective bidder's representative who is responsible for the inquiry;
 - b. Name of the prospective bidder;
 - c. Representative's business phone number; and
 - d. Representative's e-mail address.
8. Type the inquiry in the space provided. including:
 - a. A reference to the relevant part of this ITB;
 - b. The heading for the provision under question; and

- c. The page number of the ITB where the provision can be found.
9. Click the "Submit" button.

Prospective bidders submitting inquiries will receive an immediate acknowledgement by e-mail that their inquiry has been received. **The prospective bidder who submitted the inquiry will not receive an e-mail response to the question, but will need to view the response on the State Procurement web site where it will be posted for viewing by all prospective bidders.**

Prospective bidders may view inquiries using the following process:

1. Access the State Procurement web site at <http://www.ohio.gov/procure>;
2. From the Navigation Bar on the left, select "Find it Fast";
3. Select "Doc/Bid/Schedule #" as the Type;
4. Enter the Bid Number found on Page 1 of this document;
5. Click the "Find It Fast" button;
6. On the document information page, click the "View Q & A" button to display all inquiries with responses submitted to date.

DSA will try to respond to all inquiries within 48 hours, excluding weekends and State holidays. DSA will not respond to any inquiries received after 8:00 a.m. on the Inquiry Period End Date. Prospective bidders who attempt to seek information or clarifications verbally will be directed to reproduce their questions to writing in accordance with state purchasing policy. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with Development staff or any other agency of the State to discuss this ITB may result in the bidder being deemed not responsive.

SPECIFICATIONS

Scope

The Bidder awarded the contract (known as “Contractor” in this section) shall provide and manage all technical support for videos, DVD’s, webinars, and CD production for marketing activities pertaining to Sponsor’s Office of Business Assistance’s Small Business Office (the “OBA”) and the Small Business Development Center (“SBDC”) network throughout Ohio for a period of 2 State of Ohio fiscal years (July 1, 2013 – June 30, 2015).

Specific services shall be provided upon request of Sponsor made by an authorized representative of the – Daryl Hennessey, Interim Director, and Karen Shauri, Associate Director or their designee. Each request for services will be referred to as a “**Project.**” Contractor shall provide in writing for each Project a reasonably detailed description of the deliverable to be produced, a timeline for production of the deliverable, a list of all information and other project support (e.g., access to individuals, coordination of meetings and other logistical support) to be provided by the Division, and a budget for production of the deliverable (a “**Project Quotation**”).

A Project Quotation must be accepted by the Office in writing prior to commencement of work on the Project in order to constitute an obligation of Sponsor under this Agreement.

Requirements

The following is a detailed list of requirements and deliverables that must be met by the successful bidder.

- A. Produce CDs and DVDs of all of the Office training materials, e.g. Ohio Business Matchmaker annual conference;
- B. Video production of all events and training programs;
- C. Assist with the creation and presentation of the SBDC webinars;
- D. Provide technical assistance and video-streaming with online training courses (training to support SBDC, Portability Grant, Restored Citizen Program, Women’s Programs, Check Ohio First and Special Markets);
- E. Work with internal and external communications to coordinate media-related events;
- F. Outline-timetable of activities; benchmark hours for process and turnaround of production; provide cost per hour for requested services;

Services	Price	Unit
Standard Compensation w/o equipment (pre-production and consultation services)		Per / Hour

Location videography (HDVideo) (within Franklin County)		Per / Hour
Location videography (HDVideo) (outside Franklin County, including travel)		Per / Hour
Digital editing		Per / Hour
Format encoding		Per / Hour
File management and storage		Per / Hour
Uploading to virtual storage (you tube, vimeo, website)		Per / Hour
Graphic creation, conversion and management		Per / Hour
After Effects creation, customizing and compositing		Per / Hour
Audio recording, mixing, editing and mastering		Per / Hour
Voiceover services		Per / Project
DVD Duplication w/label and slim case		Each
CD Duplication w/label and slim case		Each

Annual Budget shall not exceed \$20,000 per year. The total contract, covering a 2 year period, shall not exceed \$40,000.

Bids failing to quote prices in the units requested will be determined to be non-responsive and will not receive further consideration. Bid prices will be evaluated and awarded in aggregate by totaling all hourly rates to obtain a total and then comparing each bidders total hourly rate.

- G. Bidder must demonstrate experience specific to video production services of live training sessions and other marketing events. Bidder must possess a minimum of 10 years experience in the video and marketing production field;
- H. Bidder will agree to provide, prior to acceptance and payment of goods/services under this agreement, a sample of prior completed production of their work;
- I. Bidder shall assign all copy rights of completed work to DSA; and
- J. Unit cost set up, shipping, handling and deliveries to 77 South High Street, 28th Floor, Columbus, Ohio 43215 shall be included in the bid price.

Additional Requirements

Bidder shall provide documentation that demonstrates they are a Minority Business Enterprise certified by the Equal Employment Opportunity Coordinator, that such certification is in effect as of the time of the bidder's response to this ITB, and will remain in effect on and after the date any contract is executed for work

No Contract Funds May be Spent Offshore

Executive Order 2011-12K “Governing the Expenditure of Public Funds for Offshore Services” prohibits the use of any public funds within the control of an executive agency to purchase services which will be performed outside of the United States.

To be considered by the Ohio Development Services Agency, a bid response must be accompanied by an Affirmation and Disclosure in the form attached to this RFP and a signed Standard Terms and Conditions Form (Appendix 2). Both of these forms must be signed at the end by an authorized representative of the proposer. Any bid response received that does not include a completed, signed copy of this form will be immediately disqualified.

A copy of the Executive Order and the Affirmation and Disclosure form are included in this RFP on the following pages. Additional information about the Executive Order is posted on the Department of Administrative Services State Procurements Help & Reference page at http://procure.ohio.gov/pdf/EO201112K/EO201112K_Announcement.pdf.



JOHN R. KASICH
GOVERNOR
STATE OF OHIO

Executive Order 2011-12K

Governing the Expenditure
of Public Funds for Offshore Services

WHEREAS, State of Ohio officials and employees must remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio in particular, and must do so especially during Ohio's continuing efforts to recover from the recent recession.

WHEREAS, allowing public funds to pay for services provided offshore has the potential to undermine economic development objectives in Ohio.

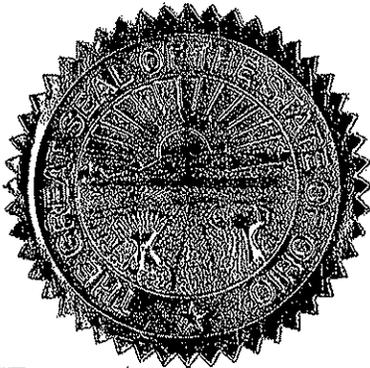
WHEREAS, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

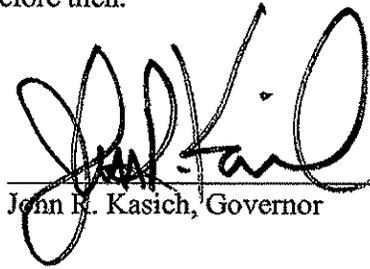
NOW THEREFORE, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and the laws of this State, do hereby order and direct that:

1. 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 the United States. This Executive Order applies to all purchases of services made directly by an Executive Agency and services provided by subcontractors of those providing services purchased by an Executive Agency.
2. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.
3. The Department of Administrative Services, through Ohio's Chief Procurement Officer, shall have in place, by July 1, 2011, procedures to ensure all of the following:
 - a. All agency procurements officers (APOs), or the person with equivalent duties at each Executive Agency, have standard language in all Executive Agency contracts which:
 - i. Reflect this Order's prohibition on the purchase of offshore services.

- ii. Require service providers or prospective service providers to:
 - 1. Affirm that they understand and will abide by the requirements of this Order.
 - 2. Disclose the location(s) where all services will be performed by any contractor or subcontractor.
 - 3. Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
 - 4. Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
 - 5. Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contracts.
 - b. All APOs confirm that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.
 - i. Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
 - ii. Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any subcontractor will not be considered.
 - c. All procurement manuals, directive, policies, and procedures reflect the requirements of this Order.
 - d. All APOs have adequate training which addresses the terms of this Order.
4. Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:
- a. Services necessary to support the efforts of the Department of Development to attract jobs and business to the state of Ohio;
 - b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities; or
 - c. Situations in which the Director of the Department of Administrative Services, or the Director's designee, shall determine that it is an emergency or that it is necessary for the State to waive some or all of the requirements of this Order. The Director shall establish standards by which Executive Agencies may request a waiver of some or all of the requirements of this Order and by which such requests will be evaluated and may be granted.
5. Executive Order 2010-09S is hereby rescinded.

I signed this Executive Order on June 21, 2011 in Columbus, Ohio and it will expire on my last day as Governor of Ohio unless rescinded before then.





John R. Kasich, Governor

ATTEST:

Jon Husted, Secretary of State

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.

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)

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: _____

STANDARD TERMS AND CONDITIONS

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

EVALUATION AND AWARD

Evaluation Process

The evaluation process may consist of up to four distinct phases:

1. The procurement representative's initial review of all bids for timely submission and completeness;
2. The opening and evaluation of the bids;
3. The procurement representative's bid tabulation and award recommendation.

Evaluation Criteria

The state will evaluate the bid based upon total cost per hour, including set up, shipping and handling cost as described in the specifications. Bid prices will be evaluated and awarded in aggregate by totaling all hourly rates to obtain a total and then comparing each bidders total hourly rate. In addition, consideration will be given to the professionalism and quality of submitted prior work in response to this ITB.

Bids failing to quote prices in the units requested will be determined to be non-responsive and will not receive further consideration.

Contract Award Process

DSA plans to award the contract based on the schedule in the ITB, if the State decides the project is in its best interests and has not changed the award date.

The award decisions of DSA are final. All bidders will be notified in writing of the outcome of their bids after DSA makes its decision.

Upon the approval of the award recommendation issued by the procurement representative, a notice of contract award will be sent to the awarded contractor(s).

Number of Awards

DSA anticipates making one award for a period of two years depending on program needs and contractor fit.

Funding Approval Threshold

In the event that expenditures with an awarded contractor exceed \$50,000 in spending under this agreement or exceed \$50,000 in aggregate spending across all contracts between the contractor and Development; further expenditures with that contractor under this agreement will be subject to State of Ohio Controlling Board approval.

AGREEMENT FOR SERVICES

This Agreement for Services (“**Agreement**”) is made and entered into by and between the **State of Ohio, Development Services Agency** (“**Sponsor**”), and _____ (“**Contractor**”). This Agreement shall have Ohio Development Services Agency Agreement Control Number of _____

1. Statement of Work. Contractor shall undertake and complete the work and activities set forth in Exhibit I, “Scope of Work,” which is attached hereto, made a part hereof, and incorporated herein by reference as if fully rewritten herein. Contractor shall consult with the personnel of Sponsor and with other appropriate persons, agencies, or instrumentalities as necessary to ensure a complete understanding of the work and satisfactory completion thereof.

2. Sponsor’s Instructions. Sponsor may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Agreement. Upon such notice and within a reasonable time, Contractor shall comply with such instructions and fulfill such requests to the satisfaction of Sponsor. It is expressly understood by the parties that the instructions and requests are for the sole purpose of performing the specific tasks requested and to ensure satisfactory completion of the work described in this Agreement. However, they are not intended to amend or alter the terms of this Agreement or any part thereof.

3. Term and Location of Performance.

(a) Term. This Agreement shall be binding upon both parties, and the work described in this Agreement shall commence on _____ and all activities under this Agreement shall be completed not later than _____, on which date this Agreement shall expire. In the event that the work hereunder is to be done in separate phases, each phase shall be completed within the time prescribed in Exhibit I.

(b) Location of Performance. Contractor affirms that it has read and understands Executive Order 2011-12K issued by Ohio Governor John R. Kasich, that it shall abide by those requirements in the performance of this Agreement, and that it shall perform no services required under this Agreement outside of the United States. This Executive Order can be found online at:

<http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>.

(c) Change of Performance Location. Contractor also affirms, understands, and agrees to immediately notify Sponsor of any change or shift in the location(s) of services performed by Contractor or its subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) outside of the United States.

4. Compensation. In consideration of the promises of Contractor herein, Sponsor agrees to pay Contractor at the rates set forth in Exhibit I on a reimbursement basis upon Sponsor’s receipt and approval of proper invoices. Contractor shall not be compensated for services rendered hereunder except as expressly set forth herein. The total compensation to be paid to Contractor under this Agreement shall not exceed _____ Thousand and No/100 Dollars (\$_____,000.00).

5. Proper Invoicing Method. Contractor shall be required to submit proper invoices that are itemized and show all of the following:

- (a) Performance of the service described in Exhibit I;
- (b) Date or dates of the rendering of the service;

- (c) An itemization of the things or service done, the material supplied or the labor furnished; and
- (d) The sum due pursuant to that invoice in relation to the total compensation owed under the Agreement.

The adequacy and sufficiency of such invoices shall be determined solely by Sponsor. If Sponsor determines that an invoice is inadequate or insufficient, or determines that further documentation or clarification is required for a particular invoice, the burden of providing the required information or documentation is on Contractor. Costs incurred by Contractor which are associated with providing the required additional information or documentation and costs which are related to defending an inadequate or insufficient invoice shall not be charged to Sponsor and shall not be considered an allowable expense under this Agreement. Failure to comply with this section shall delay payment to Contractor under this Agreement.

6. Contractor's Expenses. Contractor shall solely be responsible for all office, business, and personnel expenses associated with the performance of this Agreement.

7. Permissible Expenses. If "travel expenses," as defined in Ohio Administrative Code Section 126-1-02, are a cost of the Project eligible for reimbursement, Contractor shall be reimbursed for those permissible travel expenses in amounts in accordance with Ohio Administrative Code Section 126-1-02, as updated from time to time (the "Expense Rule") and Contractor agrees that it shall not be reimbursed and Sponsor shall not pay any items that are deemed to be "non-reimbursable travel expenses" under the Expense Rule, whether purchased by the Contractor or Sponsor or their respective employees or agents.

8. Termination.

(a) General. Sponsor may terminate this Agreement upon thirty (30) days written notice to Contractor if Sponsor determines that the product or services to be provided as further described in Exhibit I is inadequate for the intended use or cannot be feasibly adapted for the intended use. In addition, either Sponsor or Contractor may terminate this Agreement for just cause upon thirty (30) days written notice to the other party. Upon notice of termination, Contractor shall cease all work under this Agreement and shall take all necessary or appropriate steps to limit disbursements and minimize costs in ceasing all work. Contractor shall be required to furnish a report setting forth the status of all activities under the Agreement including, but not limited to, the work completed and the payments received by Contractor and such other information as Sponsor may require. Subject to any claim for damages arising from Contractor's breach, Contractor shall be entitled to compensation for work completed through the date Contractor received notice of termination upon submission and approval of proper documentation or invoices.

(b) Services Performed Outside the U.S.

(i) Sponsor is not obligated and shall not pay for any services provided under this Agreement that Contractor or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, such activities will be treated as a material breach of this Agreement, and Contractor shall immediately return to Sponsor all funds paid for those services.

(ii) In addition, if Contractor or any of its subcontractors perform any such services outside of the United States, Sponsor may, at any time after the breach, terminate this Agreement for such breach, upon written notice to Contractor. If Sponsor terminates the Agreement, Sponsor may buy substitute services from a third party, and Sponsor may recover the additional costs associated with acquiring the substitute services.

(iii) If Contractor or any of its subcontractors prepares to perform services or changes or shifts the location(s) of services performed by Contractor or its subcontractors under this Agreement to a location(s) outside of the United States, but no services are actually performed outside of the United

States, Contractor shall promptly, but in no event later than 10 days, change or shift the location(s) of services performed to location(s) within the United States. Sponsor may recover liquidated damages in the amount of 1% of the value of the contract for every day past the time permitted to change or shift the location(s) to the United States.

9. Records Maintenance and Access.

(a) Maintenance of Records. Contractor shall establish and maintain for at least three (3) years after the last day of the Term of the Agreement or earlier termination of this Agreement its records regarding this Agreement, including, but not limited to, financial reports, job creation and retention statistics, and all other information pertaining to Contractor's performance of its obligations under this Agreement. Contractor also agrees that any records required by Sponsor with respect to any questioned costs, audit disallowances, litigation or dispute between Sponsor and Contractor shall be maintained for the time needed for the resolution of such question or dispute.

(b) Inspection and Copying. At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Contractor shall make available to Sponsor, its agents or other appropriate State agencies or officials all books and records regarding this Agreement which are in the possession or control of Contractor, including, but not limited to, records of personnel. Sponsor, its agents and other appropriate State agencies and officials may review, audit and make copies of such books and records, and any such inspection of books and records will be undertaken in such a manner as not to interfere unreasonably with the normal business operations of Contractor. Contractor shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 9(b) from Contractor's other records of operation.

10. Certification of Funds. It is expressly understood by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all applicable statutory provisions of the Ohio Revised Code, including but not limited to 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, and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that federal funds are used, until such time that Sponsor gives Contractor written notice that such funds have been made available to Sponsor by Sponsor's funding source. Sponsor shall provide Contractor with written evidence of the Controlling Board action within 30 days after the date on which the Controlling Board considered the appropriation request.

11. Equal Employment Opportunity. Pursuant to Ohio Revised Code Section 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement. Contractor further agrees that Contractor, any subcontractor and any person acting on behalf of Contractor or subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability, military status, national origin or ancestry. Contractor represents that it has a written affirmative action program for the employment and effective utilization of disadvantaged persons and will file a description of that program and a progress report on its implementation with the equal employment opportunity office of the Ohio department of administrative services.

12. Indemnification. Contractor agrees to indemnify and to hold the Sponsor and State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement and Contractor's performance of the obligations or activities in furtherance of the Project which are attributable to the Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties utilized by the Contractor, or joint venturers while acting under this Agreement. Such

claims shall include, but are not limited to, 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. Contractor shall bear all costs associated with defending the Sponsor and the State of Ohio against any claims. Notwithstanding the foregoing, Contractor's obligation to indemnify and hold Sponsor and the State of Ohio harmless shall be limited to actions and omissions which constitute gross negligence or violations of law and in no event shall the aggregate liability of the Contractor to the Sponsor or the State of Ohio for indemnification under this Agreement exceed the amount of compensation paid to the Contractor hereunder.

13. Conflict of Interest. No personnel of Contractor or personnel of any subcontractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Contractor shall immediately disclose in writing to Sponsor any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily. Sponsor shall cause any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Sponsor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Sponsor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

14. Drug-Free Workplace Compliance. In the event that work performed pursuant to the terms of this Agreement will be done while on state property, Contractor hereby certifies that all of 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.

15. Adherence to State and Federal Laws, Regulations.

(a) General. Contractor agrees to comply with all applicable federal, state, and local laws related to the Contractor's performance of the obligations of this Agreement. The Contractor accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Contractor in the performance of the requirements of this Agreement.

(b) Ohio Ethics Laws. In accordance with Executive Order 2011-03K, Contractor, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Contractor understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

(c) Ohio Elections Law. Contractor affirms that, as applicable to Sponsor, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

16. Unresolved Findings. Contractor warrants that it is not subject to an unresolved finding for recovery under O.R.C. 9.24. If this warranty is deemed to be false, this Agreement is void *ab initio* and the

Contractor must immediately repay to the Sponsor any funds paid under this Agreement.

17. Employees Not State Employees/Employee Acknowledgements. Contractor acknowledges and agrees that, consistent with the provisions of ORC Sections 124.01(F) and 145.012, its employees are not and shall not be deemed to be "public employees" as defined in ORC Section 145.01(A). In furtherance thereof, if Contractor has less than 5 employees, Contractor agrees to have each of its employees execute an acknowledgement to that effect and obtain from each of its employees their consent to provide copies to Sponsor or the Ohio Public Employees Retirement System, upon the written request of either of them.

18. Confidentiality. As used herein, "Confidential Information" means any and all information **provided in any form from one party to the other party which is, by its nature, information that a prudent business person would maintain as confidential.** Such information includes proprietary information, trade secret information and "Personal information" as described in Ohio Rev. Code Sec. 1347.01(E). Ohio Rev. Code Sec. 1347.01(E) provides: "Personal Information means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person." Each party to this Agreement shall use Confidential Information only in connection with the purposes set forth herein. Each party agrees to use reasonable efforts to safeguard Confidential Information. Each party acknowledges that Confidential Information may include personal or proprietary information relating to businesses or individuals. Each party shall use Confidential Information only in connection with the purposes set forth herein. Each party agrees to use reasonable efforts to safeguard Confidential Information and to prevent the unauthorized, negligent or inadvertent disclosure of Confidential Information. "Reasonable efforts" means efforts not less than those the one party employs to protect its own Confidential Information and, in any event, efforts not less than those a prudent business person would take to protect his or her own confidential and proprietary information. No Party shall, without the prior written approval of the other Party, directly or indirectly disclose Confidential Information to any person or business entity except to its own employees and representatives, including, without limitation, attorneys, accountants and financial advisors on a need-to-know basis for the purposes contemplated by this Agreement. Without limiting the generality of the foregoing, if either Party experiences any breach of data security that exposes the Confidential Information to disclosure or unauthorized use, that Party agrees to bear all costs to notify every individual whose Confidential Information may have been compromised and in cases where Grantee experiences that breach of data, Grantee agrees that it shall also hold Grantor harmless from any claim arising from or related to such breach, subject to the limits of liability already set forth in this Agreement.

19. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

(b) Forum and Venue. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

(c) Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

(d) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

(e) Conflict of Provisions. Should it be determined that a provision within this Agreement conflicts with a provision set forth in Exhibit I, then the language of Exhibit I shall control as being the more specific terms and conditions of the Agreement.

(f) Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of Sponsor, to:

Ohio Development Services Agency
Office of
P.O. Box 1001
Columbus, Ohio 43216-1001
Attention:
Fax No.:
With a copy to Chief Legal Counsel, Ohio Development Services Agency

In case of Contractor, to:

[ADDRESS]
Attention: \
Fax No.:

Notwithstanding the foregoing, ordinary communications regarding the status of services being provided by Contractor may be sent by electronic mail to the designated representatives of Sponsor and Contractor.

(g) Amendments or Modifications. Either party may at any time during the term of this Agreement request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification of such changes. Should the parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the original agreement.

(h) Forbearance. No act of forbearance or failure to insist on the prompt performance by Contractor of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Sponsor of any of its rights hereunder.

(i) Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

(j) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

(k) Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by Contractor without the prior express written consent of Sponsor.

IN WITNESS WHEREOF, the parties have executed this Agreement For Services on the last day and year set forth below.

CONTRACTOR:

SPONSOR:

[CONTRACTOR]

**State of Ohio
Development Services Agency**

David Goodman
Director
Ohio Development Services Agency

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____