

REQUEST FOR PROPOSALS (RFP)

RFP Number: DEVSBI009

The Ohio Department of Development, Strategic Business Investment Division,
Loans and Servicing Office, is requesting proposals for:

External Evaluators to Conduct Due Diligence Reviews for Ohio Innovation Loan Fund

RFP Issued: May 24, 2011
Inquiry Period Begins: May 24, 2011
Inquiry Period Ends: June 15, 2011
Proposals Due: June 17, 2011 at 2:00PM

Submit Proposals to Nathaniel Trombley, Agency Procurement Officer by email at:
nathaniel.trombley@development.ohio.gov

This RFP consist of five (5) parts and one (1) attachment, totaling twenty three consecutively numbered pages. Please verify that you have a complete copy.

Please submit all inquiries about this RFP through the State Procurement web site at www.ohio.gov/procure. Please refer to the Part Three of this RFP, "General Instructions," for instructions on submitting inquiries through the State Procurement web site. All responses to inquiries submitted by proposers will be posted on the State Procurement website for viewing by all prospective proposers.

PART ONE: EXECUTIVE SUMMARY

Purpose

The Ohio Department of Development (Development) is conducting a search for several potential external evaluators that have due diligence expertise within one or more targeted industry sectors to assist the Loans and Servicing Office with due diligence reviews of loan applicants and portfolio reviews of recipients of Innovation Ohio Loan Fund (IOF) loans. Development will enter into a contract for services with the selected vendors who will be approached on an as-needed basis for each project.

Background

Development administers the IOF which was created as part of the Third Frontier Project to assist existing Ohio companies in developing and commercializing new products and services based on new technologies or the creative application of existing technologies within these Targeted Industry Sectors:

- Advanced Materials
- Instruments, Controls and Electronics
- Power and Propulsion
- Biosciences
- Information Technology; or
- Other targeted industries approved by the Director of Development

The IOF provides competitive financing for projects that will create high-value jobs, increase tax revenues and improve the economic welfare of the State while addressing an identified need in the capital-funding continuum. The IOF is intended to supply capital to Ohio companies having difficulty securing sufficient funds from conventional sources due to technical and commercial risk factors associated with the development of a new product or service.

For additional background, please review the IOF Program Summary available for download at http://development.ohio.gov/Business/Loans_Grants.htm or Third Frontier information at <http://thirdfrontier.com/>.

Overview of Scope

Development Loan Officers receive periodic inquiries and have ongoing contact with a number of prospective companies. Many of these inquiries result in preliminary applications, typically a business plan, executive summary of the project and financial statements. Preliminary applications are reviewed by Loan Officers in an ongoing process. If it is determined that the project is a clear fit for an IOF Loan, a Financial Assistance Application (FAA) is sent to the company.

If a project requires special knowledge or is particularly complex, the Loan Officer may request an external evaluator conduct a preliminary Due Diligence Review of the preliminary application in accordance with standard due diligence practices for a period up to 4 weeks. A preliminary Review typically consists of a two or three page project overview with a description of the company, technology and market as well as a recommendation as to whether the proposed project is a fit for the IOF and whether Development should proceed with the application process.

Upon receipt of a complete FAA, a Loan Officer will request an external evaluator to conduct an Application Due Diligence Review in accordance with standard due diligence practices. This review generally consists of evaluating the IOF Loan application and working with the Loan Officer in conducting the due diligence analysis over a period up to 8 weeks. This due diligence typically includes one or more meetings with the applicant at their facility, the reviewer's office, or at Development. The 5-10 page Application Due Diligence report should include a recommendation supported by an in-depth review of the project, company, management, IP, technology, market, competition and finances.

After a loan is closed and disbursed, Development may in its discretion request an external evaluator to conduct a Portfolio Review of the loan recipient in accordance with standard due diligence practices. The evaluator will coordinate with a Loan Officer during the review in conducting the analysis over a period up to 8 weeks, which may include a site visit depending on the status of the company and reviewer's familiarity with the project. The Portfolio Review includes standardized financial statements, a brief summary suitable for a portfolio report and analysis of the status of the project and changes in the company's finances, management, operations, sales, and competitive positioning along with a brief recommendation for additional action if warranted. Development may separately request additional analysis and services in its discretion.

Proposal Requirements

Interested parties should submit a proposal consisting of the following:

- Resume of the individual or individuals that would be involved in evaluations.
- Description of the firm (if applicable, up to one page).
- Description of relevant prior experience.
- Targeted industry expertise or experience of the potential reviewer or description of how the proposer will retain necessary technical assistance.
- Prior due diligence review experience and knowledge of standard due diligence practices or description of how proposer will retain necessary due diligence review assistance.
- Acceptance of fee structure (Please see section on fee structure for amounts)
- Proposer's federal tax identification number and payment remittance address.

Fee Structure

Development has designed the following fee structure based upon current budget allocations for the State of Ohio fiscal year 2012. Proposers shall accept this fee structure. Development anticipates having the need to contract for multiple projects in each targeted industry under this agreement and will attempt to keep expenditures with each awarded contractor to a limit under \$50,000.

Review	Fee Amount	Unit
Preliminary	\$2,000.00	Per project
Application	\$6,000.00	Per project
Portfolio	\$3,000.00	Per Project
Technical Services	\$150.00	Per Hour
Pricing structure may be adjusted under extraordinary circumstances on a per project basis upon request and with prior Development approval.		

No Contract Funds May be Spent Offshore

Executive Order 2010-09S “Banning the Expenditures of Public Funds for Offshore Services” prohibits the use of any funds within the control of an executive agency to purchase services which will be provided outside of the United States. The Executive Order became effective on August 6, 2010, requiring all agency compliance beginning on that date.

To be considered by the Ohio Department of Development, a bid response must be accompanied by an Affirmation and Disclosure in the form attached to this ITB. The Affirmation and Disclosure must be signed at the end by an authorized representative of the proposer.

A copy of the Executive Order and the Affirmation and Disclosure form are included in this ITB 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/proc/help.asp>. (Under “Procurement Reference Materials,” see Executive Order 2010-09S.)



TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2010-09S

Banning the Expenditure of Public Funds for Offshore Services

- 1. Ohio's Economic Vitality Necessitates Constant Vigilance in State Job Creation Efforts.** State officials and employees must at all times 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 global recession.
- 2. No Public Funds Should be Spent on Services Provided Offshore.** Allowing public funds to pay for offshore services undermines economic development objectives and any such offshore services carry unacceptable quality and security risks.
 - a. The Purchase of Offshore Services with Public Funds Undermines Economic Development and Other Job Creation and Retention Objectives.** The expenditure of public funds for services provided offshore deprives Ohioans and other Americans critical employment opportunities. It also undermines efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which the State has invested heavily.
 - b. The Purchase of Offshore Services Has Unacceptable Business Consequences.** The use of offshore service providers could pose unacceptable data security, and thus privacy and identity theft risks. There are pervasive service delivery problems with offshore providers, including dissatisfaction with the quality of their services and with the fact that services are being provided offshore. It is difficult and expensive to detect illegal activity and contract violations and to pursue legal recourse for poor performance or data security

violations. The State's use of offshore service providers ill-serves the people of Ohio who are the primary consumers of the services provided by the State.

3. **Ohio's Policy Has Been – and Must Continue To Be – That Public Funds Should Not Be Spent on Services Provided Offshore.** Throughout my Administration, procurement procedures have been in place that restrict the purchase of offshore services. Despite these requirements, federal stimulus funds were recently used to purchase services from a domestic company which ultimately provided some of those services offshore. This incident was unacceptable and has caused me, through this Order, to redouble my commitment to ensure that public funds are not expended for offshore services.
4. **Additional Steps Will Ensure that Public Funds Are Not Spent on Services Provided Offshore.** In order to ensure that the State of Ohio makes no expenditures for services provided offshore, I hereby order the following:
 - a. No Cabinet Agency, Board or Commission (Executive Agency) shall enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States. This Order applies to all funds in the custody of an Executive Agency, be they from state, federal, philanthropic or private sources. It applies to all purchases of service made directly by an Executive Agency and services provided by sub-contractors of those providing services purchased by an Executive Agency.
 - b. 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.
 - c. The Department of Administrative Services, through Ohio's Chief Procurement Officer (OCPO), shall have in place, by August 31, 2010, procedures to ensure all of the following:
 - i. All agency procurement officers, or the person with equivalent duties at each Executive Agency (APOs), have standard language in all Executive Agency contracts which:
 - (a) Reflect this Order's prohibition on the purchase of offshore services.
 - (b) Require service providers or prospective service providers to:

- (i) Affirm that they understand and will abide by the requirements of this Order.
 - (ii) Disclose the location(s) where all services will be performed by any contractor or subcontractor.
 - (iii) 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.
 - (iv) Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
 - (v) Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contract.
- ii. All APOs are ensuring 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.
- (a) Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
 - (b) 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 sub-contractor, will not be considered.
- iii. All procurement manuals, directives, policies, and procedures reflect the requirements of this Order.
- iv. All APOs have adequate training which addresses the terms of this Order.
5. **Exceptions.** 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 Global Markets Division to attract jobs and business to the State of Ohio, including incidental services for the support of trade missions, payment of international staff, and services necessary for the operation of international offices.
 - b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities.

6. I signed this Executive Order on August 6, 2010 in Columbus, Ohio and it will not expire unless rescinded.



Ted Strickland

Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State

PART TWO: STRUCTURE OF THIS RFP

Parts

Part One	Executive Summary
Part Two	Structure of this RFP
Part Three	General Instructions
Part Four	Evaluation of Proposals
Part Five	Contract Award

Attachments

Appendix A – contract terms and conditions (subject to change at time of contract award)

PART THREE: GENERAL INSTRUCTIONS

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

Calendar of Events

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

Firm Dates

RFP Issued: May 24, 2011
Inquiry Period Begins: May 24, 2011
Inquiry Period Ends: June 15, 2011
Proposal Due Date: June 17, 2011 at 2:00PM

Estimated Dates

Contract Award Notification: June 31, 2011
Issuance of Purchase Order: To be determined

Proposal Submittal

Proposals should be submitted by email with attachments in PDF format if available. E-mail submissions to procurement@development.ohio.gov. Proposals will be considered and evaluated by the evaluation team on an ongoing basis depending upon programmatic needs and quality of candidates and proposals.

It is the Proposer's responsibility to ensure timely submission of a complete proposal. Development is under no obligation to consider a proposal which is received after the deadline or that is incomplete. Proposals that are submitted in hardcopy will not be accepted.

All costs incurred in the preparation of the proposal shall be borne by the Proposer alone, and Development shall not contribute, in any way, to the cost of the preparation of the proposal.

Any and all documents developed by the selected consultant(s) during the course of this project will be provided to Development upon request and will become the property of Development, and the selected consultant(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 RFP shall be public information unless a statutory exception exists which would protect the information from release to the public. Any information submitted with the proposal which the proposer 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 as follows: 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 Development in accordance with Ohio law.

Development reserves the right to:

- Accept or reject any and all proposals and/or bids if the State of Ohio determines that it is in its best interest to do so; and rebid the RFP requesting new proposals from qualified parties.
- Waive or modify minor irregularities in proposals received;
- Negotiate with proposers, within the requirements of the RFP, to best serve the interests of the State of Ohio; and
- Require the submission of modifications or additions to proposals as a condition of further participation in the selection process.

If, during the review process, Development determines that it is necessary to make further distinctions between certain proposers, Development may request certain selected proposers to make a presentation to certain staff and reviewers.

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

Inquiries

Prospective proposers may make inquiries or seek clarifications regarding this RFP any time during the inquiry period listed in the RFP Calendar of Events. To make an inquiry, prospective proposers 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 RFP 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 proposer's representative who is responsible for the inquiry;
 - b. Name of the prospective proposer;
 - 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 RFP;
 - b. The heading for the provision under question; and
 - c. The page number of the RFP where the provision can be found.
9. Click the "Submit" button.

Prospective proposers submitting inquiries will receive an immediate acknowledgement by e-mail that their inquiry has been received. **The prospective proposer 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 proposers.**

Prospective proposers 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 RFP 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.

The State will try to respond to all inquiries within 48 hours, excluding weekends and State holidays. The State will not respond to any inquiries received after 8:00 a.m. on the Inquiry Period End Date. Prospective proposers 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 RFP may result in the Proposer being deemed not responsive.

PART FOUR: EVALUATION OF PROPOSALS

Evaluation Process

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

1. The procurement representative's initial review of all proposals for timely submission;
2. The evaluation committee's review of the proposals for defects and scoring;
3. Requests for more information (interviews, presentations, and/or demonstrations); and
4. Negotiations.

Development may decide whether phases three and four are necessary. Development has the right to eliminate or add phases three or four at any time in the evaluation process. The State also may add or remove sub-phases to phases 2 through 4 at any time if Development believes doing so will improve the evaluation process.

Proposal Evaluation Criteria

In the proposal evaluation phase, the committee will rate the proposals submitted in response to this RFP based on the following criteria and weight assigned to each criterion.

Criteria and Scoring

The evaluation process will be separated into two (2) parts.

Part 1 of the evaluation process will consist of organizing all proposals based upon targeted industry expertise. If a Proposer submits a response that includes an industry not within the IOF program's approved targeted industries, the proposal will not be reviewed in part 2 of the evaluation process.

Targeted Industries
Advanced Materials
Instruments, Controls and Electronics
Power and Propulsion
Biosciences
Information Technology
Other targeted industries approved by Director of Development

Part 2 of the evaluation process will consist of competitively scoring proposals within specific targeted industries based upon the number of points assigned to each criterion. In the case of overlapping targeted industries within proposals, the proposal will be assessed within each of the overlapping targeted industries. The highest scored proposal within each targeted industry will be awarded the scope of work.

Criteria	Maximum Score
Proposer provided resumes of the individual or individuals to be involved in due diligence reviews.	10 points
Proposer provided a description of the firm (up to one page).	10 points
Proposer provided a description of relevant prior experience.	10 points
Proposer clearly demonstrated the targeted industry expertise or experience of the potential reviewer or description of how the proposer will retain necessary technical assistance.	40 points
Proposer clearly demonstrated prior due diligence experience and familiarity with industry standard practices or description of how proposer will retain necessary due diligence assistance.	25 points
Proposer provided their federal tax identification number and payment remittance address.	5 points
Total Maximum points	100 points

PART FIVE: CONTRACT AWARD

Contract Award Process

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

Upon the approval of the award recommendation issued by the evaluation committee, a notice of contract award and finalized contract terms and conditions will be sent to the awarded contractor(s) for signature. Once three copies of the signed contract are received from the contractor(s), Development will complete full execution of the contract by signing it.

Once the contract is fully executed, Development will issue a copy of the executed contract to the contractor(s) for their files.

Number of Awards

Development anticipates making 4 to 8 awards 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.

Appendix A:

Sample contract terms and conditions

AGREEMENT FOR SERVICES

This Agreement for Services (“**Agreement**”) is made and entered into by and between the **State of Ohio, Department of Development** (“**Sponsor**”), and _____ (“**Contractor**”). This Agreement shall have the following ODOT Agreement Control Number of ____ 10- ____.

1. **Controlling Board Approval.** Pursuant to Ohio Revised Code (ORC) Section 127.16(B), this Agreement shall not be valid and enforceable until the Controlling Board of the State of Ohio has approved the expenditure of the funds pursuant to the terms of this Agreement. As a result, funds in an amount not to exceed _____ and No/100 Dollars (\$____, __00.00) have been made available to the Contractor by the Controlling Board Action No. DEV _____ dated _____, 2010, for the purposes of securing the services of the Contractor as more specifically described in this Agreement.
2. **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.
3. **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.
4. **Time of Performance.** 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 expires. 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.
5. **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 _____ and No/100 United States Dollars (\$____, __00.00). For fiscal purposes _____ and No/100 Dollars (\$____, __00.00) shall be allocated from fiscal year FY2011 funds and _____ and No/100 Dollars (\$____, __00.00) shall be allocated from fiscal year FY2012 funds.
6. **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.

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

8. Travel Expenses. If contemplated under this Agreement, Contractor, its employees or agents, shall be reimbursed for travel expenses in amounts not to exceed the maximum rates as set forth in Ohio Administrative Code Section 126-1-02, as updated from time to time.

1. 9. 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) If Contractor or any of its subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. Sponsor 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 Sponsor all funds paid for those services. Sponsor may also recover from the Contractor all costs associated with any corrective action Sponsor 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.

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

(iii) If Sponsor 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 twenty-five percent (25%) of the value of the Agreement.

(iv) Sponsor, 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, Sponsor may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

(v) Notwithstanding Sponsor permitting a period of time to cure the breach or the Contractor's cure of the breach, Sponsor does not waive any of its rights and remedies provided Sponsor in this Agreement, 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.

10. 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 10(b) from Contractor's other records of operation.

11. 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.

12. 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, national origin, military status, 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, national origin, military status 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 department of administrative services.

13. 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.

14. 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.

15. Ohio Ethics Laws. In accordance with Executive Order 2007-01S, Contractor, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (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 Executive Order 2007-01S 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.

16. 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.

17. Conflict of Interest. No personnel of Contractor, subcontractor of Contractor or personnel of any such subcontractor, or 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 functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person, who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his 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 participation in any such action would not be contrary to the public interest.

18. 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.

19. Adherence to State and Federal Laws, Regulations. 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.

20. 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.

21. Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Contractor must certify compliance with Ohio Revised Code Section 2909.33.

22. 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, the License and Service Agreement, then the language of Exhibit I, License and Service Agreement 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 Department of Development
_____ Division
P.O. Box 1001
Columbus, Ohio 43216-1001
Attention: Director, _____ Division
Fax No.: (614) _____

In case of Contractor, to:

[Name]
[Address]

Attention: _____
Fax No.: (614) _____

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

By: _____

Printed Name: _____

Title: _____

Date: _____

SPONSOR:

State of Ohio
Department of Development

James Leftwich, Director

By: _____

Printed Name: _____

Title: _____

Date: _____