

# REQUEST FOR PROPOSALS (RFP)

**RFP Number: DEV14SBI01**

The Ohio Development Services Agency, Office of Strategic Business Investments,  
is requesting proposals for:

## **Appraisal Evaluation Services**

RFP Issued: June 16, 2014  
Inquiry Period Begins: June 16, 2014  
Inquiry Period Ends: June 30, 2014  
Proposals Due: July 3, 2014 at 2:00 p.m.

Submit Proposals via e-mail to:

David Jende, Agency Procurement Officer  
Ohio Development Services Agency  
Finance and Internal Services  
[Procurement@development.ohio.gov](mailto:Procurement@development.ohio.gov)  
(614) 466-0419

This RFP consists of five parts and three attachments, totaling thirty-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](http://www.ohio.gov/procure). Please refer to 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.



Development  
Services Agency

## **PART ONE: SERVICES REQUESTED INFORMATION**

### **PURPOSE**

The Development Services Agency's (ODSA) Strategic Business Investment Office on behalf of the ODSA is requesting proposals from contractors to provide (as needed) appraisal evaluation services on assets pledged as collateral on ODSA loans.

With the ever changing economic markets, the assessment of loan portfolio strength and risk is extremely vital to verifying and mitigating circumstances that could further lessen the viability of the ODSA's loan portfolio. Risk rating the actual loan and company financial activity and structure is one aspect. Verifying and assessing the value of pledged business assets and real estate is the other. The RFP is intended to allow for machinery, equipment, inventory, intellectual property, and real estate appraisals to be completed on a case by case basis in situations in which the need to understand the value of ODSA's loan collateral is warranted.

ODSA is requesting proposals to provide these services in State fiscal year (FY) 2015.

### **BACKGROUND**

While The Department of Administrative Services does have appraisal vendors listed in its data base, there are currently no State contracts for Appraisers. Knowledge of the value of real estate, fixed assets, and INTELLECTUAL PROPERTY (I/P) pledged as collateral for a loan is essential in planning a strategy to negotiate to maximize the collections of every ODSA loan in a modification, or workout scenario.

Each appraiser's knowledge and experience is unique, and each appraiser must decide for each subject property whether or not he or she has the knowledge and experience to perform the appraisal assignment. The types of property encountered will vary from company to company and from each piece of real estate. The burden is on the appraiser to ascertain whether his or her knowledge and experience is sufficient to develop credible assignment results. The appraiser must evaluate his or her abilities, and then choose whether or not to make a competency disclosure as required by the COMPETENCY RULE (see definitions, page 15).

When encountering properties about which the appraiser has limited experience and knowledge, the appraiser is faced with several commonly-used options:

- Implement the COMPETENCY RULE requirements regarding a deficiency in competency including making a competency disclosure to the client.
- Expand the scope of work in order to complete the assignment competently, such as, by doing the necessary research and fact-finding and/or consulting with an expert.
- Retain the services of a specialist to independently identify and value the subject property. The specialist's findings can then be embedded into the appraiser's report. This method is favored by many generalist appraisers.
- Decline to appraise the property and, instead, refer the client to a specialist appraiser who would develop his or her own opinion of value and prepare a separate and independent appraisal report.

The appraisals can be utilized for loan(s) in the following programs:

The Innovation Ohio Loan Fund (IOF), The Commercial Acceleration Loan Fund (CALF), The Targeted Investment Program (TIP), The Ohio Enterprise Bond Fund (OEBF), Research & Development Investment Loan Program (R&D Loan), and the 166 Direct Loan Program (166 Direct Loan), and/or any other loan programs in which an assessment of collateral is needed.

## **SCOPE OF WORK**

ODSA may receive inquiries for appraisals from either Jobs Ohio and/or any other State Small Business Credit Initiative or Regional State Partner, or in cases in which multiple financing sources exist.

The appraisal company will perform an on-site fair market and liquidation value appraisal on the machinery, equipment and business assets (office furniture, etc...), real estate, and/or intellectual property of the ODSA specified borrower in accordance with the Uniform Standards of Professional Appraisals Practice (USPAP). The appraisal will provide ODSA with an assessment of the value of assets that were pledged as collateral on the respective ODSA loan product. Upon completion of ODSA due diligence, and upon confirmation of the assignment, the appraisal company will contact representatives of the Subject Company to schedule the onsite evaluation. **Completion of the valuation will be within fourteen (14) business days after the confirmation of assignment, or possibly in correlation as to when the appraiser can gain access to the assets.**

**SCOPE OF WORK (REAL ESTATE APPRAISALS):** The appraiser must, at a minimum:

1. Provide an appraisal meeting the agency's definition of an appraisal. The definition of appraisal should be in the Ohio DOT's FHWA - Appraisal Manual. For Federal-aid projects the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).(see definitions, page 15)
2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
3. Perform an inspection of the subject property.
4. The inspection should be appropriate for the appraisal problem, and the inspection should address:
  - o The extent of the inspection and description of the neighborhood and proposed project area,
  - o The extent of the subject property inspection, including interior and exterior areas,
  - o The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property),
5. In the appraisal report, include a sketch of the property and provide the location and dimensions of any improvements. Also, it should include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sale.)

6. The appraisal report shall include items required by the acquiring agency including, but not limited to, the following list:
  - The property right(s) to be acquired, e.g., fee simple, easement, etc.,
  - The value being appraised (usually fair market value), and its definition
  - Appraised as if free and clear of contamination (or as specified),
  - The date of the appraisal report and the date of valuation,
  - A realty/personalty report is required per 49 CFR 24.103(a)(2)(i), ).(see definitions, page 15)
  - The known and observed encumbrances, if any,
  - Title information,
  - Location,
  - Zoning,
  - Present use, and
  - At least a 5-year sales history of the property.
7. In the appraisal report, identify the highest and best use. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
8. Present and analyze relevant market information. The inspection report should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.

In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under USPAP to ensure compliance with USPAP while following this Uniform Act requirement.
9. Report his or her analysis, opinions, and conclusions in the appraisal report.

#### Additional Requirements For Appraisals

**INTENDED USE:** Each appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, etc.) for a Federally assisted project.

**INTENDED USER:** The intended user of this appraisal report is primarily the acquiring agency, but its funding partners may review the appraisal as part of their program oversight activities.

**DEFINITION OF FAIR MARKET VALUE:** Includes the following:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and

5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
10. **CERTIFICATION:** *The required certification is in the Ohio DOT's FHWA - Appraisal Manual. (see definitions, page 13)*

**ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:

- The data search requirements and parameters that may be required for the project.
- Identification of the technology requirements, including approaches to value, to be used to analyze the data.
- Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
- Instructions to the appraiser to appraise the property "As Is" or subject to repairs or corrective action.
- As applicable, include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

#### **SCOPE OF WORK (PERSONAL PROPERTY APPRAISALS):**

Appraisers will either have to be USPAP certified, and/or follow the guidelines and procedures of the USPAP.

USPAP consists of definitions, a preamble, rules, standards and standards' rules, and statements on appraisal standards. The four rules grounding USPAP are Ethics, competency, scope of work, jurisdictional exceptions.

The Rules: Ethics, Competency, Scope of Work, and Jurisdictional Exception. Ethics mandates that appraisers must not perform an assignment with bias, advocacy, predetermined opinions and conclusions, misrepresent appraisal role in outside services, must not defraud or mislead with intention, must not allow employees to mislead or defraud, must not engage in discrimination, criminal conduct, or be negligent. Appraisers must disclose past, present or future interests in the property being appraised, any kickbacks or referral fees, and provide confidentiality to clients using their services. Additionally, appraisers may not provide a predetermined result, a result favoring the client, the amount of value opinion, the attainment of a stipulated result – taxes reduced, or loan secured – or the occurrence of a stipulated result.

Competency requires that the appraiser must either be competent to perform an assignment or acquire such competency, or must decline or withdraw from an assignment when competency cannot be achieved.

Scope of work entails that the appraisal process identify the problem to be solved, determine and perform the scope of work necessary to develop credible assignment results, and disclose the scope of work in the report.

Jurisdictional exception notes that if laws void particular appraisal processes the appraiser will not engage those particular voided activities in carrying out an assignment.

Appraisal will provide the following:

- Both fair market and liquidation values.
- Detailed line item report that includes type of equipment, age, quantity, condition and value.
- Pictures with specific identification with respect to each individual piece of equipment.
- Overall assessment that summarizes the appraisers experience with the respective company.

### **SCOPE OF WORK (INTELLECTUAL PROPERTY APPRAISALS):**

Appraisers should maintain a full-service patent brokerage and IP consulting firm. ODSA's objective is to have a mechanism to determine the value of intellectual property. This can include selling, licensing, or buying patents or portfolios. Additionally appraisals could provide IP assessment and strategy expertise.

If the appraisal findings determine that there is value, ODSA, has the option and discretion of entering a proactive brokerage sales campaign with an appraiser of its choice. The campaign will be designed to create a marketing package that includes all the information a buyer needs to conduct the due diligence required to evaluate patent or portfolio, including evidence-of-use charts and potential licensing candidates. The appraiser will be directed to contact prospective purchasers and/or licensees, understanding that a business may purchase the patent to both practice it and license it to others. The appraiser will attempt to facilitate buyer due diligence, and negotiate and close the sale (subject to ODSA approval) on behalf of the ODSA.

Appraisal company will provide the following:

- A well-supported and defensible independent opinion of value narrative of the history and nature of the intangibles and IP statement describing and explaining the purpose, scope, value definition and asset definition of the appraisal.
- Detailed industry and economic overviews relating to the intangibles and IP
- Detailed qualitative and quantitative analysis of the intangibles and IP, including (when possible): Income approach to value, market approach to value, and cost approach to value.
- Overview of methodology, assumptions and limiting conditions.
- Detailed exhibits that support computations and analysis.
- Qualitative and quantitative characteristics of the intangibles and IP.
- Earnings capacity and profitability relating to the intangibles and IP.
- Market share supported by, or as a result of, the intangibles and IP.
- Legal rights and restrictions to the intangibles and IP.
- Contracts associated with the intangibles and IP
- Competition, barriers to entry and risks associated with the intangibles and IP
- Product life cycles and positioning
- Historical growth and prospects for the future

**PROPOSAL REQUIREMENTS**

Please indicate **your** field of expertise, respective certification(s) and years of experience for each category: **Please elaborate and provide details with a separate attachment.**

- Commercial Real Estate \_\_\_\_\_
- Residential Real Estate \_\_\_\_\_
- Machinery and Equipment \_\_\_\_\_
- Trucks, Construction, Crane, Agriculture & Mining Equipment \_\_\_\_\_
- I/P – Intellectual Property, Software, Patents, and Copyrights \_\_\_\_\_

Appraisers responding to his RFP are asked to format their proposal(s) within the following order and content:

1. Provide a general description of the respondent’s background, nature of business activities, and experience related to the program being addressed and substantiating the company’s qualifications to provide the requested services.
2. Provide all qualifications, certifications, references.
3. Indicate above which (or all) of the areas the respondent has expertise.

**FEE STRUCTURE**

An hourly fee schedule for appraisals that must be inclusive of administrative fee costs; labor costs; travel costs; and any ancillary costs.

| <b><u>Appraisal Type</u></b>                                   | <b><u>Hourly Rate</u></b> |
|--|---------------------------|
| Commercial Real Estate   |                           |
| Residential Real Estate  |                           |
| Machinery and Equipment  |                           |
| Trucks, Construction, Crane, Agriculture & Mining Equipment    |                           |
| I/P – Intellectual Property, Software, Patents, and Copyrights |                           |

Each appraisal shall be billed individually by the all-inclusive rate stated in the final contract. As an example: Cost of Appraisal = # of Hours Required \* All-Inclusive Hourly Rate

## **PART TWO: STRUCTURE OF THIS RFP**

### **PARTS**

|            |                                |
|------------|--------------------------------|
| Part One   | Services Requested Information |
| Part Two   | Structure of this RFP          |
| Part Three | General Instructions           |
| Part Four  | Evaluation of Proposals        |
| Part Five  | Contract Award                 |

### **ATTACHMENTS**

Appendix 1 – Executive Order 2011-12K

- Governing the Expenditure of Public Funds for Offshore Services

Appendix 2 – Standard Affirmation and Disclosure Form, Standard Terms and Conditions

- Standard Affirmation and Disclosure Form must be signed by an authorized official of Proposer's organization and must be included for any proposal to be scored

Appendix 3 – DSA's Standard Agreement for Services

- DSA's standard, or boilerplate, personal service contract document, including terms and conditions
- This sample document is provided only for convenience and the terms and conditions contained therein are subject to change without notice

### **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 & ON-LINE INFORMATION**

The schedule for this RFP is given below and is subject to change. DSA may change this schedule at any time. If DSA 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 at the following link: <http://procure.ohio.gov/proc/index.asp>. The web site announcement will be followed by an addendum to this RFP, which also will be made available through the same State Procurement web site.

It is each prospective Proposer's responsibility to check the State Procurement web site's question-and-answer area for this RFP for current information and the calendar of events scheduled through award of any contract.

Other than by adherence to the RFP Inquiry process, set forth below, no contact related to this RFP shall be made with DSA until a contract award is announced. Notwithstanding this prohibition, DSA, at its sole discretion, may request additional information as part of the review process outlined below.

#### **Firm Dates**

|                               |                                  |
|-------------------------------|----------------------------------|
| <b>RFP Issued:</b>            | <b>June 16, 2014</b>             |
| <b>Inquiry Period Begins:</b> | <b>June 16, 2014</b>             |
| <b>Inquiry Period Ends:</b>   | <b>June 30, 2014</b>             |
| <b>Proposal Due Date:</b>     | <b>July 3, 2014 by 2:00 p.m.</b> |

#### **Estimated Dates**

|                                     |                         |
|-------------------------------------|-------------------------|
| <b>Contract Award Notification:</b> | <b>July, 2014</b>       |
| <b>Issuance of Purchase Order:</b>  | <b>To be determined</b> |

#### **PROPOSAL SUBMITTAL**

Proposals must be submitted in the following manner:

- **Proposals must be submitted via e-mail by no later than July 3, 2014 by 2:00 p.m. to [Procurement@development.ohio.gov](mailto:Procurement@development.ohio.gov).**
- Proposals are to be submitted on 8.5 x 11-inch paper.
- Margins must not be less than  $\frac{3}{4}$  of an inch on all sides.
- Font must be 10 point or larger with no more than 6 lines of text per inch.
- Proposals should be no more than 40 pages in length. Forms required to be returned with the proposals, such as Appendix 2, will not be counted toward the maximum total.
- All pages must be numbered consecutively using the format "Page [#] of [total number of pages]" (e.g., Page 2 of 20).

Proposers are advised there will be no opportunity to correct mistakes or deficiencies in their submitted materials after the Proposal Due Date. Proposals that are incomplete or otherwise missing required information may not be evaluated.

It is the Proposer's responsibility to ensure timely submission of a complete Proposal. Late Proposals will not be scored. DSA is under no obligation to consider a Proposal which is received after the Proposal Due Date or that is incomplete. Proposals that are not submitted in the format requested will not be scored.

No supplementary or revised materials will be accepted after the Proposal Due Date unless specifically requested by DSA.

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

Any and all documents developed by the Proposer during the course of this project will be provided to DSA upon request and will become the property of DSA, and the Proposer 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 a public record unless a statutory exception exists that would protect the information from release to the public. Any information submitted with the Proposal which the Proposer reasonably believes to be 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: the phrase "trade secret," marked with two asterisks on each side, must be placed at the beginning and end of the trade secret information (example: \*\* TRADE SECRET \*\*). In addition, the trade secret information shall be underlined. Information determined to be a trade secret under the laws of the State of Ohio may be protected as trade secrets by DSA in accordance with Ohio law.

DSA reserves the right to:

- Accept or reject any and all Proposals and/or bids if Development determines that it is in the best interests of the State to do so.
- Rebid this RFP, requesting new Proposals from qualified firms.
- Waive or modify minor irregularities in Proposals received.
- Negotiate with Proposer(s), within the requirements of this RFP, to best serve the interests of the State of Ohio.
- Require the submission of modifications or additions to Proposals as a condition of further participation in the selection process.
- Fund any Proposal in full or in part; any assignments of work by DSA under the scope of this RFP will be made dependent on need and the availability of adequate, specific funding.
- Not make an award at the end of the evaluation process; this RFP is not to be interpreted or construed to guarantee that one or more Proposers submitting responses will be awarded contracts.
- Adjust the RFP Calendar of Event dates for whatever reason it deems appropriate.
- Contact Proposer to clarify any portion of the Proposer's submittal.

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

In accordance with federal and state statutes and DSA 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 the following:
  - 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, making certain to include the following:
  - 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.

**DSA will try to respond to all properly posed inquiries within 48 hours, excluding weekends and state holidays. DSA will not respond to any inquiries received after 8:00 a.m. on June 30, 2014.** Prospective Proposers who attempt to seek information or clarifications verbally will be directed to reduce their questions to writing in accordance with the terms of this RFP and state purchasing policy. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with DSA staff or any other agency of the State to discuss this RFP may result in the Proposer being deemed ineligible.

**PART FOUR: EVALUATION OF PROPOSALS**

**EVALUATION PROCESS**

DSA's evaluation process of responses submitted to this request may consist of up to four distinct phases:

1. DSA's initial review of all proposals for timely submission;
2. An evaluation committee review of the proposals for defects and scoring;
3. DSA's request for more information (clarifications, interviews, presentations, and/or demonstrations); and,
4. Negotiations or best offer requests.

At its sole discretion, DSA will determine whether phases three and/or four are necessary under this RFP, reserving for itself the ability to eliminate or add phases three or four at any time during the evaluation process. DSA may add or remove sub-phases to phases 2 through 4 at any time if DSA believes doing so will improve the evaluation process.

A minimum average score of 75 must be achieved during the evaluation process to be considered for the contract.

**PROPOSAL EVALUATION CRITERIA**

In the proposal evaluation phase, Development staff or reviewers selected by Development (the committee) will rate the proposals submitted in response to this RFP based on the following criteria and weight assigned to each criterion.

| Evaluation Criteria   | Weight                    |
|---|---------------------------|
| Demonstrated and verified certification(s)/memberships and experience of twenty (20) or more years. Member of the Appraisal Institute (MAI); Member of the Royal Institution of Chartered Surveyors (MRICS); Certified as an Ohio General Real Estate Appraiser; Certified Auctioneers Institute (CAI) Ohio; Uniform Standards of Professional Appraisals Practice (USPAP); The Appraisal Foundation (TAF); Appraisal Standards Board (ASB); Licensing Executive Society (LES); Certified Licensing Professional (CLP) and other relevant associations. | Up to 25 points           |
| Demonstrated appraisal experience and expertise with various projects of similar scope and scale.   | Up to 35 points           |
| Cost and Competitiveness (hourly fee must incorporate travel expenses)  | Up to 30 points           |
| References  | Up to 10 points           |
| <b>Total:</b>   | <b>100 points Maximum</b> |

## DEFINITIONS

### **USPAP Requirements**

USPAP's COMPETENCY RULE states that an appraiser must:

1. be competent to perform the assignment;
2. acquire the necessary competency to perform the assignment; or
3. decline or withdraw from the assignment.

If the appraiser determines that he or she is not competent prior to accepting an assignment, the appraiser must:

1. disclose the lack of knowledge or experience to the client before accepting the assignment (or at that point in the appraisal process at which the deficiency is discovered);
2. take all steps necessary or appropriate to complete the assignment competently (such as through expanded personal study/research or consulting with an expert); and
3. describe in the report the lack of knowledge and/or experience and the steps taken to complete the assignment competently.

The fact that competency can apply to many factors within an assignment is addressed in the COMPETENCY RULE's Comment to the "Being Competent" section which states:

"Competency may apply to factors such as, but not limited to, an appraiser's familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method. If such a factor is necessary for an appraiser to develop credible assignment results, the appraiser is responsible for having the competency..."

The SCOPE OF WORK RULE states that for each appraisal an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report.

### **Immediate Disclosure Premature?**

There is **no** USPAP requirement that appraisal reports include a statement of competency. What USPAP **does require** is that a competency disclosure be made at the point in the appraisal process at which the appraiser recognizes that a lack of knowledge and/or experience that prevents the appraiser from completing the assignment competently.

**Ohio DOT's FHWA – Appraisal Manual §24.103 Criteria for appraisals.**

(a) Appraisal requirements. This section sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>1</sup> (See appendix A, §24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).<sup>2</sup>

<sup>1</sup>Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/htm/USPAP2004/toc.htm>.

<sup>2</sup>The “Uniform Appraisal Standards for Federal Land Acquisitions” is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select “Legal/Regulatory” or call 888-570-4545.

(1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in §24.2(a)(3) and the five following requirements: (See appendix A, §§24.103 and 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, §24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, §24.103(a).)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) Influence of the project on just compensation. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A, §24.103(b).)

(c) Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

(d) Qualifications of appraisers and review appraisers. (1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, §24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)

## **PART FIVE: CONTRACT AWARD**

### **CONTRACT AWARD PROCESS**

It is DSA's intention to award one or more contracts under the scope of this RFP and as based on the RFP Calendar of Events schedule, so long as DSA determines that doing so is in the State's best interests and DSA has not otherwise changed the award date.

Any award decision by DSA under this RFP is final. After DSA makes its decision under this RFP, all Proposers will be notified (in writing or by phone, at DSA's discretion) of the final evaluation and determination as to their Proposals.

DSA will issue a notice of contract award to the selected Proposer(s), and finalized contract terms and conditions will be forwarded for signature. Once three executed copies of the contract are submitted by the Proposer(s), and pending any further approvals that may be required (e.g., State Controlling Board), DSA will fully execute the contract.

Once the contract is fully executed, DSA will issue to the Proposer(s) one (1) copy of the signed instrument for its/their files.

Unless otherwise negotiated and included in the executed contract/scope of work, the selected vendor(s) shall be bound by all outlined services, policies and procedures as contained in the vendor's submitted and evaluated proposal.

### **NUMBER OF AWARDS**

DSA anticipates making at least one award depending on programs' needs and the fit of the Proposer(s) to the scope of this RFP.

### **FUNDING APPROVAL THRESHOLD**

In the event that contractual expenditures with the selected Proposer(s) will exceed \$50,000 in spending under any contract that results from this RFP, or that otherwise exceed \$50,000 in aggregate spending across all contracts between the Proposer and DSA, the contract will be subject to the approval of the State of Ohio Controlling Board.

# **Appendix 1:**

## **Executive Order 2011-12K**

*Governing the Expenditure of Public Funds for Offshore Services*

**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/EO20112K\\_Announcement.pdf](http://procure.ohio.gov/pdf/EO201112K/EO20112K_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.

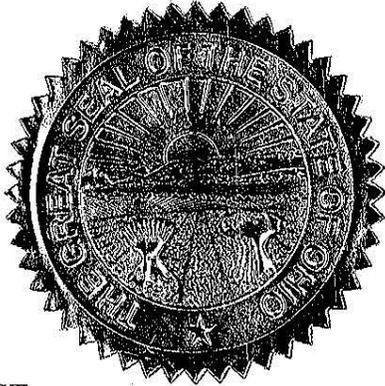
**WHEREAS**, the expenditure of public funds for services provided offshore may deprive Ohioans and other Americans of critical employment opportunities and may also undermine efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which this State has invested heavily.

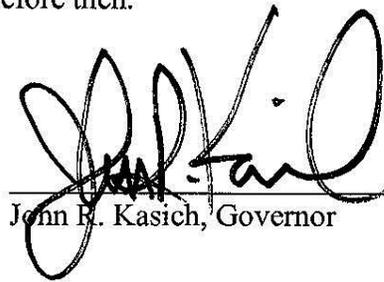
**NOW THEREFORE**, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and the laws of this State, do hereby order and direct that:

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

# **Appendix 2:**

## **Standard Affirmation and Disclosure Form and Standard Terms and Conditions**

*The Standard Affirmation and Disclosure Form must be filled out and returned with a bid response in order for it to be eligible for scoring.*

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

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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.

# **Appendix 3:**

## **DSA's Standard Agreement for Services**

*This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.*

## AGREEMENT FOR SERVICES

This Agreement for Services (“**Agreement**”) is made and entered into 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. Confidential Information.

(a) "Confidential Information" means any and all information provided by Sponsor, whether in written, electronic or oral form, and including without limitation, proprietary information, customer information, which is, by its nature, the type of information that a prudent business person would maintain as confidential, and trade secrets as protected in the State by operation of Sections 1333.61 to 1333.69 of the Ohio Revised Code. In the event either party visits any of the offices of the other party, "Confidential Information" shall also include such information that may come to the visiting party's knowledge by observation or otherwise as a result of any such visit.

(b) Contractor acknowledges that Confidential Information may include personal or proprietary information relating to businesses or individuals doing or potentially doing business in Ohio. Contractor shall use Confidential Information only in connection with the purposes set forth above. Contractor 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 Contractor employs to protect its own confidential information and, in any event, efforts not less than those a prudent business person would take to protect its own confidential and proprietary information.) Contractor shall not, without the prior written approval of Sponsor, directly or indirectly disclose Confidential Information to any person or business entity except to its own employees on a need-to-know basis for the purposes contemplated by this Agreement.

(c) Contractor shall not have any obligations under this Agreement with respect to any information that: (a) is already in the possession of Contractor prior to its receipt from Sponsor, or (b) is publicly known at the time of disclosure or becomes publicly known through no wrongful act or failure of Contractor, or (c) is

subsequently disclosed to Contractor on a non-confidential basis by a third party who does not have a confidential relationship with Sponsor and who rightfully acquired such information, or (d) is independently developed by Contractor as evidenced by records maintained by Contractor in the ordinary course of its business, or (e) is communicated to a third party by Contractor with the express written consent of SPONSOR.

(d) In the event Contractor become legally compelled to disclose any Confidential Information of Sponsor, before doing so Contractor will provide Sponsor with prompt notice of the disclosure order so that Sponsor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement as to such disclosure. Whether or not such a protective order or other confidentiality agreement is obtained by Sponsor, Contractor shall furnish only that portion of the Confidential Information as is necessary to comply with the legal requirement and will exercise its best efforts to obtain reliable assurances that confidential treatment will be accorded any Confidential Information so disclosed.

16. 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. Grantee, by its signature on this document, certifies: (1) it 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 (2) will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Grantee 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.

17. 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.

18. 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: \_\_\_\_\_