

REQUEST FOR RESUME (RFR)

RFR NUMBER: EDUD201610425

DATE ISSUED: June 26, 2015

ELIGIBILITY: Minority Business Enterprise (MBE) only

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

TITLE: Hearing Officers

INQUIRY PERIOD BEGINS: June 26, 2015

INQUIRY PERIOD ENDS: June 29, 2015 8:00 A.M. Eastern

RESUME DUE DATE: July 3, 2015 12:00 P.M. Eastern

BID OPENING DATE: July 7, 2015

ESTIMATED AWARD DATE: July 10, 2015

SHELTERED SOLICITATION FOR OHIO MBE VENDORS:

The State of Ohio is committed to making more State contracts and opportunities available to minority business enterprises (MBE) certified by the Ohio Department of Administrative Services (DAS) pursuant to Section 123.151 of the Ohio Revised Code and Rule 123:2-15-01 of the Ohio Administrative Code. This solicitation is being issued as a minority set-aside contract in accordance Section 125.081 of the Ohio Revised Code. All respondents to this solicitation must be an Ohio certified MBE as of the proposal or bid due date above. The Offeror or bidder must maintain a valid certification throughout the term of the Contract, including any renewals. Failure to maintain a valid certification will be considered a breach of the Contract.

For more information regarding Ohio MBE certification requirements, including a list of Ohio certified MBE businesses, please visit the DAS Equal Opportunity Division web site at: <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification/tabid/134/default.aspx>

Section 1: Bid Background Information

The Office for Child Nutrition in the Ohio Department of Education (ODE) has the responsibility from the United States Department of Agriculture to administer the National School Lunch Program, the Child and Adult Care Food Program and the Summer Food Service Program (SFSP) across the state of Ohio.

The National School Lunch Program has nationally, over 25 million students in over 90 thousand schools and agencies participate in Child Nutrition Programs, making them one of the country's largest food service operations. Ohio's food service programs serve over 1 million meals daily at over 4,000 sites.

The goals of the Child Nutrition Programs are to safeguard the health and wellbeing of the nation's children, encourage domestic consumption of nutritious agricultural foods, g provide children an understanding of the relationship between proper eating habits and good health.

Who can apply to participate in the lunch program? Any school of high school grade or under recognized by the State of Ohio as operating under public or nonprofit private ownership; any public or nonprofit classes of pre-primary grades when conducted in the aforementioned schools; and any public or nonprofit, private licensed Residential Child Care Institution (RCCI).

What qualifies a student to participate? Any student under age 21 who is enrolled in an eligible school or RCCI may participate. Additional benefits may be available to a student when his or her guardian submits a Free and Reduced Price School Meals Application. Based on the household size and income, the student may be eligible for meals free or at a reduced price. Schools may charge no more than \$0.40 for a reduced-price lunch. Schools set their own prices for meals served to students who pay the full meal price (paid full-price), though they must operate their meal services as non-profit programs.

What are the meal service requirements for lunch? To be eligible for reimbursement and government donated foods, participating schools and agencies must prepare and serve meals that meet federal nutrition requirements. The reimbursable meal must be priced as a unit and available to all students regardless of their ability to pay. Meal service for lunch must be between 10:00am – 2:00pm. Schools must follow the food based menu planning option when developing menus. Food based menu planning for lunch involves minimum quantities of milk, meat or meat

alternate, vegetables, fruits, grains and breads. Menu Patterns for lunch in elementary grades must include daily: 8 ounces of fluid milk, $\frac{3}{4}$ cup total vegetables, $\frac{1}{2}$ cup total of fruits, a minimum of 1 ounce daily of meat or meat alternate and 8 ounces over the course of the week, and 1 serving daily of grain/bread and 8 ounces served over the course of the week.

What reimbursement will the school or agency receive? The school or agency is reimbursed for each complete meal served to an eligible student. Reimbursement rates are applied based on the student's eligibility category paid full-price, reduced-price, or free. The school is responsible for accurately counting the meals served to students daily by eligibility category. In addition, a government donated food entitlement is earned for each lunch served.

What records must be kept? The following are required records that must be kept for three school years plus the current year: daily menus and production records; daily meal count and cash receipt worksheets(CN-7); free and reduced-price school meals applications; monthly inventories of food, labor and supplies; monthly records of program costs; verification records; records of On-site Accountability Reviews (if more than one site).

The Child and Adult Care Food Program is a federally-funded United States Department of Agriculture program administered by the Ohio Department of Education, Office for Child Nutrition. CACFP enables child and adult care institutions and family or group day care homes to provide nutritious meals and snacks as a regular part of their day care and that contribute to the wellness, healthy growth, and development of infants, young children, and the health and wellness of older adults and chronically impaired disabled persons.

Who can participate? Independent centers and sponsoring organizations enter into agreements with the Ohio Department of Education to assume administrative and financial responsibility for CACFP operations. CACFP provides for the serving of meals and snacks to eligible children and adults who are enrolled for care at the following types of eligible and participating centers or homes.

- Center-Based Child Care: Eligible public or private nonprofit child care centers, Head Start programs, outside-school-hours care centers, youth development programs and emergency shelters (that provide residential and food services to children and youth experiencing

homelessness) which are licensed or approved to provide day care services may participate in CACFP as independent or as sponsored centers. For profit centers must receive Title XX funds for at least 25 percent of enrolled children or licensed capacity (whichever is less) or at least 25 percent of the children in care must be eligible for free and reduced price meals. Children from birth through 12 years of age may be enrolled for CACFP benefits.

- After School At Risk Programs: Eligible public or private nonprofit or for profit programs that offer enrichment activities for at risk children and youth, 18 and under, after the regular school day ends, can provide at maximum of one meal and/or snack through CACFP. Programs must be offered in areas where at least 50 percent of the children are eligible for free and reduced price meals based upon school data.

- Family Day Care Homes: A family or group day care home must sign an agreement with a sponsoring organization to participate in CACFP. Day care homes must be licensed or approved to provide day care services. Children from birth through 12 years of age may be enrolled for CACFP benefits.

- Adult Day Care: Public or private nonprofit adult day care facilities which provide structured, comprehensive services to nonresidential adults who are functionally impaired, or aged 60 and older, may participate in CACFP as independent or sponsored centers. The adult component of CACFP is targeted to individuals who remain in the community and reside in their home or with family members. Individuals who reside in institutions are not eligible for CACFP benefits. For profit centers may be eligible for CACFP if at least 25 percent of their participants receive benefits under Title XIX or Title XX.

The Summer Food Service Program (SFSP) provides free, nutritious meals and snacks to help children in low-income areas get the nutrition they need to learn, play and grow throughout the summer months when they are out of school.

The SFSP was created to ensure that children in low-income areas can continue to receive nutritious meals during long school vacations, when they do not have access to school lunches or breakfasts. But, although millions of children depend on nutritious, free and reduced-price meals and snacks at schools during nine months of the year, just a fraction of that number receive the free meals provided by the SFSP during the summer months.

The SFSP is the single largest federal resource available for local sponsors who want to combine a food program with a summer activity program. The Food and Nutrition Service, an agency of the U.S. Department of Agriculture (USDA), administers SFSP at the federal level. The Ohio Department of Education (ODE), Office for Safety, Health and Nutrition administers the program in Ohio. Locally, the SFSP is run by approved sponsors, including school districts, local government agencies, camps and private nonprofit organizations. Sponsors provide free meals to a group of children at a central site, such as a school or community center. The sponsor receives payments from USDA, through ODE, for the meals served to children that meet program guidelines.

Section 2: Bid Objectives

Assist the Office for Child Nutrition in a variety of appellate actions under the various food programs including the following examples:

A. Child and Adult Care Food Program (“CACFP”):

Pursuant to 7 CFR 226, ODE may take certain actions to assure a participating institution and/or responsible individual’s past, present and future compliance with the CACFP. Except as provided in Section 226.8(g), the following ODE actions are subject to administrative review (appeal):

- (1) denial of a new or renewing institution’s application for participation in CACFP;
- (2) denial of an application submitted by a sponsoring organization on behalf of a facility;
- (3) proposed termination of an institution’s agreement;
- (4) proposed disqualification of a responsible principal or responsible individual;
- (5) suspension of an institution’s participation;
- (6) denial of an institution’s application for start-up or expansion payments;
- (7) denial of a request for an advance payment;
- (8) recovery of all or part of an advance in excess of the claim for the applicable period;
- (9) denial of all or a part of an institution’s claim for reimbursement (except late submission under 226.10(e));

(10) decision by the State agency not to forward to FNS an exception request by an institution for payment of a late claim or a request for an upward adjustment to a claim (see Section 226.10(e);

(11) demand for the remittance of an overpayment; and

(12) any other action of the State agency affecting an institution's participation or its claim for reimbursement.

B. Summer Food Service Program

The Ohio Department of Education ("ODE"), Office for Child Nutrition is the agency charged with administering the Ohio Summer Food Service Program ("SFSP").

A Summer Food Service Program sponsor may appeal adverse state agency administrative actions through a formal hearing. Section 225.13 (b) of the regulations governing the Summer Food Service Program for Children describes the procedures for a sponsor to appeal adverse actions which may be taken against a sponsor by the state agency. Such actions are listed below:

- a. Denial of the application for participation;
- b. Denial of a request for an advance payment;
- c. Denial of a timely claim submittal for reimbursement;
- d. Denial by the state agency to forward to FNS an exception request from the sponsor for payment of a late claim or a request for an upward adjustment of a claim;
- e. Claims against a sponsor for recovery of overpayment;
- f. Termination of the participation of a sponsor or sponsor's site;
- g. Denial of a site application.

National School Lunch Program

The Ohio Department of Education ("ODE"), Office for Child Nutrition, is the agency charged with administering the National School Lunch Program and School Breakfast Program (NSLP, SBP). Pursuant to 7 CFR 210 and 220, ODE may take certain actions to assure a participating

institution's compliance with the NSLP/SBP. Except for FNS-conducted reviews authorized under Section 210.29(d)(2), the following ODE activities are subject to administrative review (appeal): denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the State agency under Section 210.18 of this part.

Section 3: Overview of the Scope of Work

Work includes presiding over live hearings (witness testimony, admission of evidence, review of documents, and opening/closing statements), reviewing opposing written briefs, reviewing transcripts of live testimony, and rendering a final decision on the merits within a regulatory deadline. Hearings conducted under the Child Nutrition Program appeal procedures are not Chapter 119 hearings under the Ohio Revised Code. Decisions regarding scheduling, procedural matters, motions, admission/admissibility of evidence, rulings on objections, and other applications of procedural rules are in the reasonable discretion of the presiding hearing officer.

The Contractor agrees to conduct duties necessary to determine outcomes of Child Nutrition Program appeals under the governance of Federal Laws and Regulations. Child Nutrition Programs include School Meal Programs (7 CFR 210, 245, 200, 225, 215, 245); Child and Adult Care Food Program (7 CFR 226); Summer Food Service Program (7 CFR 225); Commodity Distribution Program (7 CFR 250). In this position, Contractor will preside over administrative hearings and issue final decisions pursuant to Federal Regulations. Contractor should be familiar or capable of familiarity with the regulatory structure of each of the Child Nutrition Programs as well as any Federal or State rules, guidance, policies, or other instructions that govern the Child Nutrition Programs.

Section 4: Contractor Qualifications

Applicants must meet the following qualifications:

- Must possess a Juris Doctorate.
- Must practice in any court of law for at least seven years with current and active license to practice law in Ohio from the Supreme Court of Ohio.

Section 5: Special Work Information

Contractors must participate in Ohio Department of Education (ODE) training to become familiar with programs and understand the regulations at the state and federal levels. Individuals will be required to confirm scheduled hearings and travel to the assigned hearing room and provide their own transportation to and from the hearings. The Contractor will be responsible for all travel expenses and/or transportation charges incurred as a result of the awarded contract. Overnight travel is required for many on-site reviews.

Section 6: Evaluation Criteria

The following criteria shall be considered to select a vendor. All criteria shall carry equal weight.

- Resume to support required qualifications

Section 7: Contract Terms and Conditions

The selected vendors will be required to enter into a contract with the Ohio Department of Education to provide the goods or services; or provide the goods or services under an existing State Term Schedule (STS) or State Term Contract (STC). Responding to this RFR shall be deemed as acceptance of the terms and conditions specified in the sample contract below, if applicable. The Department may use a credit card to pay for goods or services provided under this solicitation. Offerors are advised to review the terms and conditions in the sample contract carefully.

Section 8: Inquiry

All questions regarding this RFR should be submitted online only. Accordingly, the Department will post responses online so that interested vendors may access and share the same information. Please limit questions to no more than 5 questions per submission.

(**Note:** Inquiry function is not available after 8:00 A.M. Eastern on the specified closing date for inquiry. The system shuts down early to allow time to process responses.)

Section 9: Locate Solicitation Documents

Solicitation documents larger than two (2) megabytes cannot be posted on the state web portal.

Locate Solicitation on State Web Portal and Submit Inquiry Questions:

This solicitation document is also posted on the state web portal to allow interested vendors to submit technical questions for clarification.

Please click [here](#) to access the web portal.

- Select the *Document* bubble to sort the list by document number
- Scroll through the page to document numbers beginning with EDU

- Click the desired document number to open *Disclaimer* page
- Click the *View Opportunity Detail* to view the document summary page
- To view the document, scroll and Click the document link to open the document
- If you have questions, click *Submit Inquiry* to submit questions

Note: The Department will post responses to your question online to share the information with other interested vendors.

Locate Solicitation on Agency Website; No Inquiry Option Available:

The **Solicitation** may also be accessed on the Ohio Department of Education internet website. Please click [here](#) to access the agency internet website.

- For information on technology (IT) solicitations, click *Notices for Information Technology Vendors*
- For information on non-IT solicitations, click *Notices for Professional Services Vendors*
- To view the solicitation, click *Project Name*

Note: No Inquiry Option available at this website.

Section 10: Submission Information

Proposals must reference the RFR number above and should be submitted via email only to:

Email Address: Bidsubmission@education.ohio.gov

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address) (Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by Sub-contractor(s):

(Name) (Address, City, State, Zip)

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

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

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

OTHER IMPORTANT INFORMATION FOR VENDORS:

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

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

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

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

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

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

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

CONTRACT FOR PERSONAL SERVICES

I. AGENCY AND VENDOR INFORMATION

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

II. SERVICES, DISCLOSURE OF LOCATION OF SERVICES AND DATA

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

Detailed services to be provided by the vendor here

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

III. EFFECTIVE DATE

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

IV. CONTRACT RENEWAL

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

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

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

In addition, the Department of Education reserves the right to reject, in whole or in part, any and all responses if any of the following circumstances are true:

- (A) Bids offer supplies or services that are not in compliance with the requirements, specifications, terms or conditions stated in the bid document,
- (B) The price of the lowest responsive and responsible bid is deemed excessive in comparison with market conditions or with the Department's available funds, or
- (C) The Department determines that awarding a contract is not in the best interest of the state of Ohio.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Contract Remedies:

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

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

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

VI. COMPENSATION

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

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

VII. INVOICING, PAYMENT AND OTHER PROVISIONS

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

The Department may use the Ohio Payment Card to pay for this purchase not to exceed \$2,500 per invoice unless the Office of Budget and Management approves a higher limit. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions which may not be passed on to the Department.

VIII. UNRESOLVED FINDINGS FOR RECOVERY

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

IX: SUSPENSIONS AND DEBARMENTS

State agencies are prohibited from awarding a contract for supplies or services, funded in whole or in part with federal and/or state funds, to a business or person who appears on any debarment list. Current lists include but are not limited to the: (1) Federal List of Excluded Parties Listing System, located at <http://www.epls.gov/>, and (2) Ohio Department of Transportation Debarred

List, Located at <http://dot.state.oh.us>, under Divisions, and then Contract Administration. If the Contractor appears on any of these debarment lists or other lists established by a Federal, State, or local government agency subsequent to the award of this contract, the Contractor shall immediately notify the Department of such development(s).

X. DISCRIMINATION AND AFFIRMATIVE ACTION PLAN

The Department does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability on employment or in providing services. The Contractor agrees to abide by State and applicable Federal nondiscriminatory policies while performing services under this contract, including Ohio Revised Code § 125.111(B), which provides that "all" Contractors from whom the state or any of its political subdivisions make purchases shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as referred to in division (E) (1) of Section 122.71 of the Revised Code. Annually, each such Contractor shall file a description of the affirmative action program and a progress report on its implementation with the equal employment opportunity office of the Department of administrative services. Accordingly, the Contractor has submitted an affirmative Action Program Verification Form to the Equal Opportunity Division located at <http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx> to comply with the affirmative action requirements pursuant to the Ohio Revised Code § 125.111(B).

XI. PURCHASE, USE OR TRANSFER OF ILLEGAL SUBSTANCES

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

XII. CONTRACTOR RELATIONSHIP TO AGENCY

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

XIII. WORKER'S COMPENSATION COVERAGE

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

XIV. INDEPENDENT ENTERPRISE

The Contractor agrees that it is a separate and independent enterprise from the state and from the Department. The Contractor has a full opportunity to find other business and has made an investment in its business. This contract is not to be construed as creating any joint employment

relationship between the Contractor and/or Contractor's employees and the Department or the State of Ohio.

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

XV. OHIO ETHICS LAW

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

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

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

The Contractor affirms that it has read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.

The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

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

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses

reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

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

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

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

XVII. ASSIGNMENT OF RIGHTS

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

XVIII. APPLICABLE LAWS

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

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

Signature: _____ Date: _____
Contractor Name
Contractor

Signature: _____ Date: _____
Richard A Ross, PhD
Superintendent of Public Instruction