

OHIO DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
Office of Risk Management

**REQUEST FOR PROPOSALS**

**No. DASRISK032016**

**Date: March 7, 2016**

The Ohio Department of Administrative Services, Office of Risk Management, invites proposals from qualified attorneys and/or firms to serve as insurance defense counsel for the **Ohio Judges' Professional Liability Self-Insurance Program**.

**Proposals Due to the Ohio Department of Administrative Services**

**Attn: Bid Desk**

**4200 Surface Road**

**Columbus, OH 43228-1395:**

**April 15, 2016 at 1:00 p.m.**

**NOTICE**

R.C. Section 9.24 prohibits the State from awarding a contract to any offeror against whom the Auditor of State has issued a finding for recovery if the finding for recovery is unresolved at the time of award. By submitting a proposal, an offeror warrants that it is not now, and will not become subject to an unresolved finding for recovery under R.C. Section 9.24, prior to the award of any contract arising out of this Request for Proposals, without notifying the State of such finding.

**(1) Overview**

The Ohio Department of Administrative Services (DAS), through its Office of Risk Management, issues this Request for Proposals (RFP) seeking proposals from qualified, independent Ohio attorneys and/or law firms to serve as insurance defense counsel (“Counsel”) to the judges of all municipal, county, common pleas courts and the court of claims, private judges and retired assigned judges (“Insured Judges”) in the State of Ohio covered by the Ohio Judges’ Professional Liability Self-Insurance Program, a self-insured program operated under the auspices of the Ohio Department of Administrative Services and Section 9.82 of the Ohio Revised Code. The Program provides coverage in personal capacity and combined personal and official capacity claims for professional liability and employment practices liability and limited coverage through the probable cause stage of disciplinary proceedings initiated under the Rules for the Government of the Bar, Rule V.

In addition, selected attorneys and/or law firms will also be responsible for providing an attorney-staffed Judicial Hotline program which provides limited advice and counsel to the Insured Judges and their administrative staff in pre-litigation matters, with the objective of reducing the likelihood of liability and the future expenditure of insurance funds. Such program may include offering seminars to courts to advise them on employment practice matters, such as having appropriate employment policies and procedures in place.

The term of the contract will coincide with the insurance coverage provided by the Ohio Judges’ Professional Liability Self-Insurance Program, July 1, 2016 – June 30, 2017. Attorney fees and expenses over the last ten years of the program have historically ranged from \$180,000 - \$300,000.

Under this RFP, DAS shall select one or more qualified attorneys and/or law firms to provide representation of the Insured Judges in all claims and litigation falling within the scope of coverage of the Ohio Judges’ Professional Liability Self-Insurance Program.

**(2) Inquiries**

Offerors may submit inquiries regarding this RFP through the State Procurement Web site at <http://procure.ohio.gov/>. Once at the site, Offerors should locate the “Quick Links” menu on the right and select “Bid Opportunities Search”. Offeror should enter “Bid Number” and click “Search”. Next, click on “Document/Bid Number” and locate section called “Other” at the bottom right of the Opportunity Detail page. Offerors should click “Submit Inquiry” button to submit a question. Offerors submitting inquiries will receive an immediate acknowledgement that their inquiry has been received as well as an email acknowledging receipt of the inquiry. Offerors will not receive a personalized email response to their question, nor will they receive notification when the question is answered. Responses may be viewed by clicking the “View Q & A” button located in the same section. All inquiries should be submitted a minimum of five (5) working days prior to the bid opening date.

DAS will try to respond to all inquiries within 48 hours of receipt, excluding weekends and State holidays. Offerors are to base their RFP responses, and the details and costs of their proposals, on the requirements and performance expectations established in this RFP for the future contract, not on details of any other potentially related contract or project. If Offerors ask questions about

existing or past contracts using the Internet Q&A process, DAS will use its discretion in deciding whether to provide answers as part of this RFP process.

DAS is under no obligation to acknowledge questions submitted through the Q&A process if those questions are not in accordance with these instructions or deadlines.

**(3) Scope of Work or Deliverables**

Counsel will primarily provide litigation defense of Insured Judges (approximately 830). Counsel shall have extensive and relevant experience in representing judicial officers or courts in both state and federal litigation, as well as judges before the Supreme Court of Ohio Board of Commissioners on Grievances and Discipline.

Upon request, Counsel will assist the program administrators in the setting of reserves and the settlement and negotiation of claims involving monetary damages. Counsel will work in tandem with the program administrators.

Counsel will provide pre-litigation counsel, including judicial disciplinary matters, and advice via the Judicial Hotline to the Insured Judges and/or their administrative staff in an amount not to exceed \$50,000.00 in available billable time during the term of the contract. *The billable time for the hotline may be combined in the proposal with the cost proposals for the litigation representation.*

It is the intent of these specifications to describe the general expectations of Counsel providing representation to Insured Judges.

**(4) Minimum Requirements**

DAS has established minimum qualifications any Counsel must meet in order to qualify for an award of contract under this Request for Proposals. Any Counsel that does not sufficiently demonstrate the minimum qualifications in its response will not be considered.

The minimum qualifications for Counsel submitting proposals:

- All attorneys, including those assigned by the firm, who represent Insured Judges or respond to Judicial Hotline inquiries must be in good standing in all jurisdictions they maintain an active license;
- All attorneys who will provide services must be licensed in the State of Ohio, and either the Northern or Southern U.S. District Courts of Ohio;
- All attorneys assigned to represent Insured Judges must have extensive trial experience in the defense of public officials sued in both official and personal capacities;

- Attorneys must have five or more years of first chair experience representing judges or public officials named as defendants in employment lawsuits; if submitting a proposal as a firm, two or more of the firm’s attorneys must have five or more years of first chair experience representing judges or public officials named as defendants in employment lawsuits;
- All attorneys must have five or more years of first chair experience representing judges or public officials named as defendants in lawsuits alleging violations of 42 U.S.C. §1983; if submitting a proposal as a firm, two or more of the firm’s attorneys must have five or more years of first chair experience representing judges or public officials named as defendants in lawsuits alleging violations of 42 U.S.C. §1983;
- All attorneys must have demonstrated experience with previous representation of Ohio judges in disciplinary matters initiated under Gov. Bar R. V;
- All attorneys must have demonstrated ability and resources to handle complex litigation through trial and appeals;
- All attorneys must have demonstrated ability and resources to provide adequate and competent statewide counsel and courtroom attendance in all 88 Ohio counties;
- All attorneys must have demonstrated experience in working as assigned counsel for professional liability insurance programs;
- All attorneys must maintain professional malpractice insurance (Errors & Omissions) with a minimum limit of liability of \$1,000,000 each occurrence and \$2,000,000 in the aggregate.

**(5) Contract**

Selected Counsel and DAS will execute a Contract for Services (“Contract”), attached as Attachment “A” to this RFP. DAS reserves the right, in its sole discretion, to recommend an award of the Contract with or without negotiation.

DAS, as a state agency, is exempt from taxation. Federal transportation and excise taxes, as well as state excise taxes shall not be included in the proposal prices. Excise tax exception certificates will be furnished upon request. The tax exempt number: 31- 1334820.

DAS has adopted a goal of utilization of certified minority business enterprises where possible in its awards for goods and services. Accordingly, Counsel should indicate whether it is certified as a minority business enterprise or when business operations are shared with a certified minority business enterprise.

DAS represents that it will have adequate funds to meet the obligations that will be incurred by contract. However, at its option, DAS shall have the right to terminate any resulting contract

should its appropriations, spending authority, or other revenues be reduced or, if applicable, if grant funds used to support this project are reduced or terminated.

The successful Counsel will warrant that they are not subject to an unresolved finding for recovery under R.C. Section 9.24. If the warranty is false on the date the parties sign the Contract awarding a firm's proposal, the Contract is void *ab initio*, and Counsel must immediately repay to DAS any funds paid under the Contract.

All proposals offered are firm. Check your proposal carefully because errors cannot be corrected after the proposals are opened. It is a condition of any award under this proposal that Counsel shall deliver at prices quoted, even if in error.

A proposal, upon acceptance by DAS, immediately creates a binding contract between the Counsel and DAS. Once accepted, it may not be rescinded, canceled, or modified by the Counsel.

Any contract resulting from this request for proposals is binding on the successful Counsel. Failure of the Counsel to meet or perform any of the contract terms or conditions shall permit DAS to rescind or cancel the Contract and purchase comparable replacement services in the open market. Counsel shall reimburse costs and expenses in excess of the contract price necessitated by such replacement services to DAS.

**(6) Notice Regarding Disclosure of Confidential and Proprietary Business Information and Trade Secrets**

DAS hereby advises Counsel that all documents submitted in response to this Request for Proposals, including those documents that purportedly contain confidential and proprietary business information or trade secrets, may be considered public records. DAS may allow the public, including other Counsel, to inspect and obtain copies of these documents in accordance with Section 149.43 of the Ohio Revised Code, after the Request for Proposals deadline expires unless each of the following applies:

(A) In its response to this Request for Proposals, Counsel clearly identifies the document or document information it believes is not a record as defined by Section 149.43 of the Ohio Revised Code;

(B) In its response to this Request for Proposals, Counsel clearly identifies the state, federal or common law that exempts the document or document information under Section 149.43 of the Ohio Revised Code;

(C) DAS staff independently determine that the document or document information is not a record as defined in Section 149.43 of the Ohio Revised Code.

**(7) Format and Content of Counsel's Proposal**

Submitted proposals should provide a concise delineation of Counsel's capabilities to perform the services requested. The proposal submitted must provide the requested information in sufficient detail to enable DAS to evaluate Counsel pursuant to the specifications and other requirements.

Counsel responding to the request for proposals should satisfy all the requirements specified in the request for proposals to qualify.

All proposals shall contain:

1. Name, address, telephone number, and legal business status of Counsel.
2. Name, title, address and telephone number of the person or persons authorized to represent the firm in negotiations with DAS with respect to the RFP and any subsequently awarded contract.
3. Original signature of attorney or representative or officer of the firm on the cover letter. If the respondent is a partnership, the response must be signed by a general partner of the partnership.
4. Physical address of Counsel's Ohio offices.
5. Information on whether Counsel represents any interests that may constitute a conflict of interest with Insured Judges.
6. A statement that details the names, bar number, resumes, and relevant expertise of the attorneys to be assigned to the work required under this RFP.
7. A statement listing the proposed hourly rates for each attorney (partner or associate), paralegal and general support staff to be assigned to the work required under this RFP.
8. At least two references, including one governmental entity reference. Include the name, agency, address, and phone number for each reference.
9. Copy of Counsel's equal opportunity policies or proof of adoption of the State's model Affirmative Action Policy.

**(8) Evaluation Criteria**

Proposals will generally be evaluated based on the following criteria:

1. Overall Counsel's experience and knowledge representing judges or other public officers in litigation in both official and personal capacities;
2. Overall Counsel's experience and knowledge representing judges in employment matters and before the Ohio judicial disciplinary system;
3. Experience in working for insurance liability programs for professional coverage.
4. Cost, including proposals that demonstrate creative or alternative billing arrangements (fee caps, fixed fee, blended rates, not-to-exceed) that include cost-containment methods and reduce the overall expenses to the Ohio Judges' Professional Liability Self-Insurance Program.

In addition, proposals will be evaluated on the basis of Counsel's understanding of the Ohio Judges' Professional Liability Self-Insurance Program, the quality of the services offered, and personnel recommended for the program. With this information, DAS will select one or more attorneys and/or firms whose proposal is determined to be the most advantageous to the State.

The proposals received will be evaluated by DAS, which may accept or reject any or all proposals, in whole or in part, and may waive minor defects in a proposal, if no prejudice results to the rights of another Counsel or to the public.

DAS reserves the right to accept more than one proposal in order to designate geographic territories for the legal services to be provided to the Insured Judges.

**(9) Submission of Proposal and Contact Information**

Sealed proposals are to be received no later than April 15, 2016 at 1:00 p.m. Proposals received after this date and time will not be considered. Two complete and signed copies of the proposal must be submitted for evaluation. In addition, any request for confidentiality regarding the proposal submitted must be clearly delineated. A completed Proposal may be submitted to DAS in person, by U.S. mail, by an overnight delivery service, or courier service. The Proposal must be in a sealed envelope clearly marked on the outside as follows:

**Request for Proposals – Ohio Judges' Professional Liability Program  
c/o Bid Desk  
Ohio Department of Administrative Services  
4200 Surface Road  
Columbus, Ohio 43228**

An envelope containing a Proposal that is not clearly marked and is opened inadvertently before the scheduled opening time may not be evaluated. DAS reserves the right to reject any and all proposals. The preparation of the proposal shall be at Counsel's expense. All proposals will be opened on April 15, 2016, at 1:00 p.m., at the Bid Desk.

DAS estimates it will evaluate Counsel and announce a contract award or awards no later than May 15, 2016, or as soon thereafter as practicable.

**State of Ohio**  
**Department of Administrative Services**  
**Contract for Services**

This contract is made by and between the State of Ohio, Department of Administrative Services ("ODAS"), 4200 Surface Road, Columbus, Ohio, 43228, and XXXXXXX ("Contractor"), located at XXXXXX, Columbus, Ohio 43215.

ARTICLE I: STATEMENT OF WORK

- 1.1 Contractor shall undertake the work and activities set forth in the Scope of Work, which is attached hereto as Exhibit I, and incorporated by reference as if fully written herein. Contractor shall consult with ODAS personnel and other appropriate persons, agencies, and instrumentalities as necessary to assure understanding of the work and satisfactory completion thereof.
- 1.2 It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage that is required in the normal course of business. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from ODAS to any public employee retirement system.
- 1.3 Contractor shall furnish professional services performed in accordance with standards necessary for the satisfactory performance of the work hereunder. ODAS shall not be required to provide any training to the Contractor to enable it to perform services required hereunder. Contractor agrees that it does not have any authority to sign agreements, notes, and/or obligations or to make purchases and/or dispose of property for, or on behalf of, the State of Ohio or ODAS.
- 1.4 Contractor shall furnish its own support staff, materials, tools, equipment, and other supplies necessary for the satisfactory performance of the work hereunder. Contractor shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this contract.
- 1.5 Any reimbursable travel-related expenses, if expressly provided by this Contract, shall be paid in accordance with the requirements and rates as set forth in Rule 126-1-02 of the Ohio Administrative Code.
- 1.6 ODAS may, from time to time as it deems appropriate, communicate specific instructions and requests to Contractor concerning the performance of the work described in this contract. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this contract. The management of the work, including the exclusive right to control or direct the manner or means by which the work described herein remains with and is retained by the Contractor. ODAS retains the right to ensure that the work of the Contractor is in conformity with the terms and conditions of the Contract, as specified herein and in Exhibit 1.

ARTICLE II: TIME OF PERFORMANCE

- 2.1 This contract shall **commence** on July 1, 2016 and shall **expire** on June 30, 2017 or when the work described in Article I has been satisfactorily completed and accepted by ODAS, whichever is earlier.
- 2.2 Upon the expiration of this contract, ODAS, at its sole discretion may renew this contract under the same terms and conditions stated herein. Such renewal shall be by written addendum executed by the both parties evidencing their agreement to renew the contract. In the event that the parties hereto do not execute such an addendum, the contract shall expire on the date set forth above and neither party to this Contract shall have any further obligations hereunder.

ARTICLE III: COMPENSATION

- 3.1 The total amount payable under this contract shall not exceed \_\_\_\_\_ Dollars **(\$00.00)** in State Fiscal Year 2017. Compensation will be paid at the hourly rate defined in Exhibit I upon completion of each deliverable or task expressly described in this Contract.
- 3.2 ODAS will submit payment upon satisfactory completion of the work and activities and submission from Contractor of a detailed invoice. All invoices must contain the following information:
  - 3.2.1 Contractor's name, complete address, and federal tax identification number;
  - 3.2.2 Purchase order number;
  - 3.2.3 Amount and purpose of the invoice;
  - 3.2.4 Description of the work performed during the billing period; and
  - 3.2.5 Dates of the performance of the work.
- 3.3 It shall be mutually agreed and understood between both parties that the total amount to be paid by ODAS to the Contractor under this contract shall in no event exceed the amounts provided in Paragraph 3.1 of this Article unless Contractor receives prior approval from ODAS or when required, approval of the Controlling Board and is so notified of such approval by ODAS in writing.

- 3.4 In accordance with Section 126.30 of the Revised Code, and any applicable rules thereto, ODAS shall make prompt payment for any services acquired from the Contractor. Upon receipt of a proper invoice and unless otherwise stated, payment shall be made within thirty (30) calendar days. The adequacy and sufficiency of all invoices shall be determined solely by ODAS. If ODAS determines that an invoice is inadequate or insufficient, or determines that further documentation or clarification is required, the burden of providing the required information or documentation is on the Contractor. ODAS shall notify the Contractor in writing of the inadequacy or insufficiency and may provide any information necessary to correct the inadequacy or insufficiency. If such notification of inadequacy or insufficiency is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.
- 3.5 ODAS shall pay interest on overdue payments in accordance with Section 126.30 of the Revised Code. The interest rate shall be at the rate per calendar month which equals one twelfth of the rate per annum prescribed by Section 5703.47 of the Revised Code.
- 3.6 It is expressly understood by the parties that none of the rights, duties, and obligations described in this contract shall be binding on either party until all statutory provisions under 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 General Assembly and by the Controlling Board of the State of Ohio or, in the event that federal funds are used, until such time that ODAS gives the Contractor written notice that such funds have been made available to it, by ODAS's funding source.
- 3.7 Contractor expressly understands that ODAS will not compensate Contractor for any work performed prior to Contractor's receipt of notice from ODAS that the provisions of ORC 126.07 have been met as set forth above, or for work performed after the ending date specified in ARTICLE II.
- 3.8 Contractor expressly understands that ODAS does not have the ability to compensate Contractor for invoices submitted after the State of Ohio purchase order has been closed. Contractor must submit final invoices for payment no later than ninety (90) days after the ending date of this Contract. Failure to do so will be deemed a forfeiture of the remaining compensation due hereunder.
- 3.9 In the event that the activities contemplated herein are to be financed in whole or in part by a gift, grant, loan, or donation from any person, agency, or instrumentality other than ODAS, the Contractor shall submit to ODAS such reports and information and comply with such other conditions as ODAS may require in order to fulfill its obligations under any agreement providing for such financial assistance. ODAS shall give the Contractor timely notice in writing of such requirements.

#### ARTICLE IV: RECORD KEEPING REQUIREMENTS

- 4.1 Contractor shall keep all financial records in a manner consistent with generally accepted accounting principles. Documentation to support each action shall be filed in a manner allowing it to be readily located.
- 4.2 During the period covered by this contract and until the expiration of three years after final payment under this contract, the Contractor agrees to provide ODAS, its duly authorized representatives or any person, agency, or instrumentality providing financial support to the

work undertaken hereunder, with access to and the right to examine any books, documents, papers, and records of Contractor involving transactions related to this contract. Contractor shall, for each subcontract in excess of Twenty-Five Hundred dollars (\$2,500.00), require its subcontractors to agree to the same provisions of this Article.

#### ARTICLE V: RELATED CONTRACTS

- 5.1 The work contemplated in this contract is to be performed by Contractor, who may subcontract without State's approval for the purchase of articles, supplies, components, or special mechanical services, that do not involve the type of work or services described in Article I, but which are required for its satisfactory completion. Contractor shall not enter into other subcontracts without written approval by ODAS. All work subcontracted shall be at the expense of the Contractor.
- 5.2 Contractor agrees that it has not entered into nor shall it enter into other contracts, without written approval of ODAS, to perform substantially identical work for the State of Ohio such that the work product contemplated under this contract duplicates the work done or to be done under the other contracts.

#### ARTICLE VI: CONFLICTS OF INTEREST

- 6.1 No personnel of Contractor shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the work.
- 6.2 Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this contract or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to ODAS in writing. Thereafter, he or she shall not participate in any action affecting the work under this contract, unless ODAS shall determine that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

#### ARTICLE VII: NONDISCRIMINATION OF EMPLOYMENT

- 7.1 Pursuant to R.C. 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, 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. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the Work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.
- 7.2 Contractor represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to R.C. 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

## ARTICLE VIII: DELIVERABLES; RIGHTS IN DATA, PATENTS AND COPYRIGHTS

- 8.1 Unless otherwise stated in this Contract, Deliverables means all documents, data, materials, information, processes, studies, reports, surveys, proposals, plans, codes, scientific information, technological information, regulations, maps, equipment, charts, schedules, photographs, exhibits, software, software source code, documentation, and other materials and property prepared or developed or created or discovered under or in connection with this contract.
- 8.2 If applicable and unless otherwise stated in this Contract, all Deliverables provided by the Contractor shall become the intellectual property of ODAS and ODAS shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. Contractor shall not obtain copyright, patent, or other proprietary protection for the Deliverables. Contractor shall reserve its rights in all methods, pre-existing work, and pre-existing software applications and data, used to prepare such Deliverables.
- 8.3 Contractor shall not include in any Deliverable any copyrighted matter, unless the copyright owner and any person, agency, or instrumentality providing financial assistance to the work hereunder gives prior written approval to use such copyrighted matter in the manner provided herein.
- 8.4 Neither Contractor nor any of the Contractor's employees, agents, subcontractors, or assigns shall make a disclosure for the purpose of securing a patent in the United States or any other country for any of the Deliverables unless such disclosure is approved in writing by ODAS prior to application for the patent. In the event that such patent is obtained, the Contractor shall, at the request of ODAS, provide ODAS with written authorization for ODAS and any other person, agency, or instrumentality contributing financial support to the work contemplated hereunder to make use of the subject of the said patent disclosure without payment therefore.
- 8.5 Contractor agrees that all Deliverables may be made freely available to the general public, to the extent allowed by law.

## ARTICLE IX: TERMINATION

- 9.1 ODAS may, at any time prior to completion of the Work, suspend or terminate this Agreement with or without cause by giving written notice to Contractor. In the event that the Work includes divisible services, ODAS may, at any time prior to completion of the Work, by giving written notice to Contractor, suspend or terminate any one or more such portions of the Work.
- 9.2 If it appears to ODAS that the Contractor has failed to perform any of the requirements of this contract, or that Contractor is in violation of a specific provision of this contract, ODAS may provide the Contractor with notice of the failure to perform or the violation and shall provide a thirty (30) day period to cure any and all defaults under this contract. During the thirty (30) day cure period, Contractor shall incur only those obligations or expenditures which are necessary to enable the Contractor to continue its operation and achieve compliance as set forth in the notice.
- 9.3 In the event of termination under this Article, the Contractor shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report describing the status of all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODAS may require.
- 9.4 In the event of termination under this Article, Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODAS. ODAS shall not be liable for any further claims, and the claims submitted by the Contractor shall not exceed the total amount of consideration stated in this contract. In the event of suspension or termination, any payments made by ODAS in which services have not been rendered by the Contractor shall be returned to ODAS.
- 9.5 Contractor may terminate this Agreement upon sixty (60) days' prior written notice to ODAS.

## ARTICLE X: RESPONSIBILITY FOR CLAIMS

- 10.1 Contractor agrees to hold the State of Ohio, Department of Administrative Services harmless from any and all claims for personal injury or property damage resulting from the fault or negligence of the Contractor and from claims for wages or overtime compensation due its employees in rendering services pursuant to this Contract, including payment of all costs in defense of any claim made under the Fair Labor Standards Act or any other federal or state law.
- 10.2 When applicable, Contractor shall reimburse ODAS for any judgments for infringement of patent or copyright rights and agrees to defend against any such claims or legal actions if called upon by ODAS to do so.

ARTICLE XI: COMPLIANCE WITH LAW

11.1 Contractor agrees to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. Contractor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance 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 work authorized by this contract. ODAS shall not be liable for any taxes under this contract.

ARTICLE XII: LIMITATION OF LIABILITY

12.1 ODAS's liability for damages, whether in contract or in tort, shall not exceed the total amount of compensation payable to Contractor under Article III or the amount of direct damages incurred by Contractor, whichever is less. The Contractor's sole and exclusive remedies for the ODAS's failure to perform under the contract shall be as set forth in this Article. IN NO EVENT SHALL ODAS BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF ODAS HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE XIII: AMENDMENTS OR MODIFICATIONS

13.1 Either party may, at any time during the term of this contract, request amendments or modifications. Requests for amendments or modifications shall be in writing and shall specify the requested changes and the justifications of such changes. Should the parties consent to modification of the contract, then an amendment shall be drawn, approved, and executed in the same manner as the original contract.

ARTICLE XIV: ASSIGNMENT

14.1 This contract, and any rights, duties, or obligations described herein, shall not be assigned by either party hereto without the prior express written consent of the other party.

ARTICLE XV: GOVERNING LAW

15.1 This Contract and any claims arising out of this Contract shall be governed by the laws of the State of Ohio. Any provision of this Contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Contract or the performance thereunder shall be brought only in the courts of Ohio, and the Contractor hereby irrevocably consents to such jurisdiction. To the extent that ODAS is a party to any litigation arising out of or relating in any way to this Contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

ARTICLE XVI: DRUG-FREE WORKPLACE

- 16.1 Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

ARTICLE XVII: ETHICS AND DEBARMENT

- 17.1 Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.
- 17.2 Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25.

ARTICLE XVIII: EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES

- 18.1 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.
- 18.2 Contractor agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form which is incorporated and becomes a part of this Agreement.

ARTICLE XIX: OHIO ELECTIONS LAW

- 19.1 Contractor hereby certifies that neither Contractor nor any of Contractor's partners, officers, directors or shareholders, nor the spouse of any such person, has made contributions in excess of the limitations specified in R.C. 3517.13.

ARTICLE XX: WORKERS' COMPENSATION

- 20.1 Contractor shall provide its own workers' compensation coverage throughout the duration of the contract and any extensions thereof. The agency is hereby released from any and all liability for injury received by the contractor, his employees, agents, or subcontractors, while performing tasks, duties, work, or responsibilities as set forth in this contract.

ARTICLE XXI: STATE AUDIT FINDINGS

- 21.1 Contractor warrants that it is not subject to an “unresolved” finding for recovery under R.C. 9.24.
- 21.2 If the warranty in paragraphs 21.1 is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to ODAS any funds paid under this Agreement.

ARTICLE XXII: INDEPENDENT CONTRACTOR ACKNOWLEDGMENT

- 22.1 Unless Contractor is a “business entity” as that term is defined in R.C. 145.037 (“an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business”) Contractor shall have any individual performing services under this agreement complete and submit to ODAS the Independent Contractor/Worker Acknowledgment Form, which is attached as Exhibit III.
- 22.2 Contractor’s failure to complete and submit Exhibit III at the time Contractor executes this agreement shall serve as Contractor’s certification that Contractor is a “business entity” as that term is defined in R.C. 145.037.

ARTICLE XXIII: NOTICES

- 23.2 All notices, consents and communications required hereunder (each, a “Notice”) shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses first set forth above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

State of Ohio  
Department of Administrative Services  
Contract for Services  
Signature Page

Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year last written below.

STATE OF OHIO  
Department of Administrative Services

CONTRACTOR:  
XXXXXXXXXX

\_\_\_\_\_  
Robert Blair, Director

\_\_\_\_\_  
Authorized Signature (Blue ink, please)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

<p><b>For Use by Office of Legal Services Only:</b></p> <p>Date Reviewed:</p>
---

## EXHIBIT I SCOPE OF WORK

Contractor shall perform the following:

### A. **OHIO JUDGES' PROFESSIONAL LIABILITY SELF-INSURANCE PROGRAM**

Contractor will provide legal defense to select judges insured through the Ohio Judges' Professional Liability Self-Insurance Program ("Program"). The legal services provided will include defense related to formal complaints filed in State and Federal Courts and disciplinary grievances covered by the Program.

Contractor shall coordinate its tasks and work with ODAS. Contractor shall transmit all non-privileged claims information (pleadings and filings) to ODAS in the event of professional or employment claims. Contractor shall not transmit the identity of the judge in any disciplinary claim to ODAS.

Contractor shall maintain a database containing basic claim information including, but not limited to: Named Insured, Claim Date, Nature of Claim, Plaintiff/Claimant/Grievant, reserves, and claim expenses.

Contractor will seek and receive formal claim approval from ODAS, Office of Risk Management, for claims involving professional liability and employment liability. Defense shall not commend until formal claim approval is communicated.

At the commencement of a claim, Contractor shall provide an estimate of anticipated defense costs to ODAS, Office of Risk Management. As the claim progresses, Contractor shall be responsible for promptly notifying ODAS of any required increases in the anticipated defense costs, Contractor shall timely communicate such requirements to ODAS prior to any expenditures.

All representation provided and work performed by Contractor shall not exceed the allowable claim limits. See Attachment "A"

Contractor agrees ODAS may commence settlement negotiations of claims (except disciplinary matters) on behalf of the Program. Contractor understands and agrees that all final settlements must receive the prior approval of ODAS. Contractor shall confer with ODAS if settlement is broached with the Plaintiff, Plaintiff's counsel, or a court and at all times relevant to any negotiation. Terms and conditions for the Program permit the settlement of matters without the consent of the self-insured.

Contractor shall be compensated for legal services at the rates listed in Attachment "B". Contractor will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The minimum time charged for any particular activity will be one tenth of an hour.

ODAS shall not permit payment on behalf of Contractor to any fringe benefit program or retirement program, or for any federal, state, or local tax, or for any other reason.

Contractor shall submit a fees and expense report on a monthly basis. Contractor shall provide ODAS with sufficient detail in each invoice to determine the nature of the legal services performed, but shall not provide privileged information arising from the representation of any judge in a disciplinary matter, including the name of a judge insured by the Program.

If, during the contract term, a complaint is issued against Contractor or any attorney employed by Contractor providing services pursuant to this Contract, alleging a violation of the Supreme Court Rules for the Government of the Bar of Ohio, or the applicable rules governing the state bar in

which the attorney has been admitted, or the Ohio Rules of Professional Conduct, then Contractor must give timely written notice, including via email, of such complaint to ODAS.

**B. OHIO JUDICIAL HOTLINE**

Contractor will provide legal services through the Ohio Judicial Hotline ("Hotline") to all judges insured through the Program. The legal services provided will include confidential consultation and advice to judges on a matter of concern that has not become the subject of a lawsuit or formal complaint. Matters may include employment related actions and ethics questions that may be contemplated by the insured. The Hotline may include offering seminars to courts to advise them on employment practice matters.

Contractor is responsible for providing up to fifteen hours of free legal advice on general legal and employment-related matters to each court, with the exception of Court of Appeals, regardless of the number of judges per court. Any court with 100 or more employees will be allocated five additional hours of hotline time each policy year. Each judge may utilize up to two additional hours of hotline time each year for his or her own judicial ethics concerns. Inquiries must be responded to within one business day.

Hotline assistance does not include:

- o Advising an inquiring judge whether his or her judicial colleague has violated the professional ethics codes;
- o Responding to affidavits of bias and prejudice or motions to recuse;
- o The creation of employee handbooks, employment policies, general disciplinary forms, or other human resources documents. However, hotline personnel may review discrete policies provided by the court for compliance with the law; they may assist the courts in developing disciplinary write-ups or FMLA/ADA documentation for individual employees; and they may provide advice on particular events.

Contractor shall be compensated for legal services at the rates listed in Attachment "C" for the Ohio Judicial Hotline and all seminars. Contractor will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour. The minimum time charged for any particular activity will be one tenth of an hour.

ODAS shall not permit payment on behalf of Contractor to any fringe benefit program or retirement program, or for any federal, state, or local tax, or for any other reason.

Contractor shall submit a fees and expense report on a monthly basis. Contractor shall provide ODAS with sufficient detail in each invoice to determine the nature of the legal services performed, but shall not provide privileged information arising from the representation of any judge in a disciplinary matter, including the name of a judge insured by the Program.

**C. DISCIPLINARY PROCEEDINGS**

Contractor will provide assistance to judges who are the subject of a letter of inquiry or grievance, including responding to the grievance. Contractor will represent and defend the applicable judge in the disciplinary process until an adverse probable cause determination is made by a panel or the Board of Professional Conduct. The total Program limit for defense costs related to disciplinary claims is \$10,000. However, the coverage for the costs associated with the defense of a disciplinary claim is contingent upon a final finding at any stage of the proceedings that the judge did not engage in any misconduct. The reimbursement of costs will not be prorated based on the number of original charges filed but later dismissed after probable cause. For purposes of the Program, consent to discipline on any formal allegation is considered a finding of discipline.

No campaign related conduct or Canon 4 violations are covered under the terms and conditions of the Program.

**Attachment "A"**

**Attachment "B"**

**HOURLY RATES FOR CIVIL AND DISCIPLINARY CASES**

July 1, 2016 – June 30, 2017

Attachment "C"

**HOURLY RATES FOR OHIO JUDICIAL HOTLINE AND SEMINARS**

July 1, 2016 – June 30, 2017

Senior Partner \$

Associates \$

Paralegals \$

**EXHIBIT II**  
**STATE OF OHIO**  
**DEPARTMENT OF ADMINISTRATIVE SERVICES**

STANDARD AFFIRMATION AND DISCLOSURE FORM  
EXECUTIVE ORDER 2011-12K

Banning the Expenditure of Public Funds on Offshore Services

This affirmation and disclosure form is not the version that is used in our other procurement documents; we require a separate signature on the form. I'm ok either way; just wanted to let you know for consistency reasons.

**CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:**

By the signature affixed to this response, the CONTRACTOR/SUBCONTRACTOR affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the CONTRACTOR/SUBCONTRACTOR becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The CONTRACTOR/SUBCONTRACTOR 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 as part of the response will deem the CONTRACTOR/SUBCONTRACTOR not responsive the contract will not be executed. If the CONTRACTOR/SUBCONTRACTOR 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)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

# Exhibit III



## INDEPENDENT CONTRACTOR ACKNOWLEDGMENT

Ohio Public Employees Retirement System  
277 East Town Street, Columbus, Ohio 43215-4642

Employer Outreach: 1-888-400-0965  
www.opers.org

This form is to be completed if you are an individual who begins providing personal services to a public employer on or after Jan. 7, 2013 but are not considered by the public employer to be a public employee and will not have contributions made to OPERS. This form must be completed not later than 30 days after you begin providing personal services to the public employer.

### STEP 1: Personal Information

Social Security Number

First Name

MI

Last Name

### STEP 2: Public Employment Information

Name of Public Employer

Employer Contact

First Name

MI

Last Name

Employer Code

Employer Contact Phone Number

Service Provided to Public Employer

Start Date of Service

Month Day Year

End Date of Service

Month Day Year

### STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification.

This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.

Signature \_\_\_\_\_ Today's Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Do not print or type name

