

## INVITATION TO BID (ITB)

**ITB NUMBER: EDUD201510093**

**DATE ISSUED: December 9, 2014**

**ELIGIBILITY: Minority Business Enterprise (MBE) only**

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

**TITLE: Storage of Assorted Bulk Items**

**INQUIRY PERIOD BEGINS: December 9, 2014**

**INQUIRY PERIOD ENDS: December 16, 2014                      8:00 A.M. Eastern**

**BID DUE DATE: December 23, 2014                      12:00 P.M. Eastern**

**BID OPENING DATE: December 29, 2014**

**ESTIMATED AWARD DATE: December 30, 2014**

### **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 Department has a need for storage space for an assortment of agency personal property including furniture, office cube panels, filing cabinets, printed material for records retention and construction materials for modifications to existing office space.

## **Section 2: Bid Objectives**

Secure sufficient warehouse space for the storage of agency property, periodic withdrawal of the same, return or replacement of withdrawn items. Stored items may become obsolescent and may need to be removed from inventory and properly disposed of as may be specified by the Department.

## **Section 3: Overview of the Scope of Work**

The selected vendor shall provide the following services:

- (1) Provide appropriate storage facility for agency property up to 3,500 square feet.
- (2) Maintain accurate inventory listing of items on hand, date items are received at the facility and placed in inventory, quantity of such items received, a general description of the nature of the items, serial numbers if applicable, and the general condition of the items.
- (3) Periodically retrieve items upon request for delivery to specified location within the limits of the City of Columbus, or for pickup by a specified delivery person.
- (4) Allow the Department personnel or designee to return unused items to inventory during business hours.
- (5) Ensure the safety of items in storage and implement warehouse industry standard measures to safeguard Department property in storage.
- (6) Provide access to staging area if items in storage need to be prepared for shipping to another location or provide warehouse personnel to perform task upon request and within a reasonable time.
- (7) Develop specific cost proposal for retrieval and delivery of inventory items in non-business warehouse hours; billing rate for storage by cost per square foot per month.
- (8) Provide a semi-annual report of all items in inventory to the Department employee coordinating this service; beginning six months from the date inventory items are received in inventory and continuing until the termination of a contract executed pursuant to this solicitation.
- (9) Provide a final report at any time this contract is terminated and work with the Department to ensure safe transition to a new vendor, if necessary.

## **Section 4: Contractor Qualifications**

The selected vendor must operate a commercial warehousing business in the last 12 months immediately preceding the date on which the vendor submits a proposal in response to this solicitation.

## **Section 5: Special Work Information**

Travel expenses will not be reimbursed as a separate charge for providing warehousing services

## **Section 6: Evaluation Criteria**

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

- (1) Pricing
- (2) Accessibility, suitability for intended use, location

- (3) Scheduling flexibility during normal business hours and weekends, if necessary
- (4) Result of a site visit at warehouse

### **Section 7: Contract Terms and Conditions**

The successful offeror(s) 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 ITB 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 ITB 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: Solicitation Documents**

Solicitation documents larger than two (2) megabytes cannot be posted on the state web portal. The [Solicitation](#) may also be accessed on the Ohio Department of Education internet website to obtain the same documents by clicking [here](#).

- Click on “Notices for Information Technology Vendors” to view information technology solicitations
- Click on “Notices for Professional Services Vendors” to view non-IT solicitations
- Identify the identical title of the attached solicitation and click the link to view it online or to save a copy to your computer

### **Section 10: Submission Information**

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

**Email Address: [Bidsubmission@education.ohio.gov](mailto:Bidsubmission@education.ohio.gov)**

STANDARD AFFIRMATION AND DISCLOSURE FORM (**Required**)

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

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

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

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

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

Name/Principal location of business of subcontractor(s):

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

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

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

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

2. Location where services will be performed by Contractor:

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

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

Name/Location where services will be performed by subcontractor(s):

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

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

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

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



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## **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 ITB, fails to comply with the procedure for participating in the ITB process, or the offeror's Proposal fails to meet any requirement of this ITB. 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 ITB.

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

The State will not be liable for any costs incurred by any offeror in responding to this ITB, 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 ITB and contract for the work through some other process or by issuing another ITB.

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 ITB, 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.

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**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](mailto: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**