

OHIO DEPARTMENT OF HEALTH REQUEST FOR QUOTATION (RFQ)

The Ohio Department of Health (ODH) is soliciting quotations for professional services.

1. PROJECT TITLE. 24 hour/7 day Response to Smoking Enforcement Reporting Telephone Line
2. OBJECTIVE. The Ohio Smoke Free Workplace Law was enacted December 7, 2006. Chapter 3794 of the Ohio Revised Code (ORC) prohibits all forms of tobacco smoke in all public places and places of employment and in areas immediately adjacent to the ingress or egress of the public place or place of employment. Reports of violations of the provisions of ORC 3794 may be submitted to the department by any member of the public by mail, electronic mail, and telephone. While the program receives some reports by mail and through email, the vast majority of reports are received by phone. Since the inception of the law, ODH has received over 50,000 reports and currently receives approximately 150 reports per week.

ODH is seeking proposals from qualified agencies or organizations to answer the Smoke Free Workplace Law Enforcement Line. Calls from throughout the state must be answered 24 hours per day and the information collected entered directly into a web based application that will automatically assign the call to the appropriate enforcement jurisdiction for investigation.

The budget for this project is \$15,000.00.

3. MINIMUM REQUIREMENTS. Qualified Bidders are agencies or organizations with at least two years' experience successfully conducting services similar to those required on this project. Qualified Bidders will also have the following qualifications:
 - 3.1. 24 hour/7 day capability to answer the phone with live attendants.
 - 3.2. Technological capability to allow for direct entering of information from calls into a web based application provided by ODH.
 - 3.3. Sufficient back-up systems to capture information that can be transferred should ODH system be temporarily incapacitated.
 - 3.4. Demonstrated ability to respond in a timely fashion to instructions for change in procedure.
4. SCOPE OF WORK OR SPECIFICATIONS. The scope of work required to successfully complete this project:
 - 4.1. Successful bidder shall correspond with the Ohio Department of Health – Smoke Free Workplace Program, Program Manager on a biweekly basis in regards to project status and any necessary changes in call-in protocol.
 - 4.2. With guidance of ODH, train staff who will answer calls. Training will focus on accessing the web-based application for the program and on the correct procedures for taking and recording a report of violation.
 - 4.3. Respond 24 hours a day, seven days a week to phone calls of reports of violation of the Smoke Free Workplace Law.
 - 4.4. Provide back-up capability to answer calls and record information in the event of a problem with ODH's server.
 - 4.5. Correctly record information from callers in such a way as to minimize duplication of businesses.
 - 4.6. Provide a weekly report of number and duration of calls taken.

- 4.7. Refer questions, not reports of violation, to appropriate source of information (enforcement v. prevention).
5. DELIVERABLES. See §5, Scope Of Work, Deliverables & Compensation.

Notice: This RFQ is not an offer or a contract.

Parties interested in submitting a formal offer must submit a written response on provision of the required services or supplies specified in this RFQ.

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6. REQUEST FOR QUOTE CONTRACTOR INSTRUCTIONS

- 6.1 Company Narrative. Responses to the RFQ shall include a short narrative describing the following:
- 6.1.1 Contractor's profile and experience with projects of similar size and scope.
 - 6.1.2 Contractor's ability to meet minimum requirements.
 - 6.1.3 Contractor's capacity to provide the services required and, the ability and experience of the staff intended to work on the Project.
 - 6.1.4 Contractor's plan for successful execution of the project.
- 6.2 Contractor's Compensation. Contractor's proposed compensation by deliverable shall be entered into the gray fields of §5 of the RFQ. If in the event a contract ensues as a result of this RFQ, the Contractor will be required to fulfill the contractual obligations at the amount quoted.
- 6.3 Vendor Information. Contractors must complete the following gray fields of the RFQ:
- 6.3.1 Vendor information fields;
 - 6.3.2 Initial and provide documentation as required in §3; and
 - 6.3.3 Sign and date accordingly;
 - 6.3.4 Submit two (2) original copies of the quote, all pages included and any additional attachments.
- 6.4 When Quotes May Be Delivered. The Ohio Department of Health (ODH) must receive quotes no later than 4:00 p.m. the day the quotes are scheduled for opening. Quotes received after 4:00 p.m. on the scheduled opening date will not be opened.
- 6.5 Where Quotes Must Be Delivered. Quotes must be delivered to the following address:
Ohio Department of Health
Office of Procurement Services
Attention: Carol Cook
246 North High Street
Columbus, OH 43215
- 6.6 Quotes are a Public Record. Once quotes have been reviewed, they will be forwarded to the ODH Project Manager to begin evaluation and award process. After quotes are opened they are public records as defined in Ohio Revised Code Section 149.43 and are subject to all laws appurtenant thereto. Contractor may request that certain information, such as trade secrets or proprietary data, be designated as confidential and not considered as public records. Pricing is not considered as confidential. The decision as to whether or not such trade secrets or proprietary data shall be disclosed shall rest solely with ODH.
- 6.7 Withdrawal of Quote Prior to Scheduled Opening. A contractor may withdraw a quote by written request any time after ODH receives the quote and before scheduled opening.
- 6.8 Withdrawal of Quote After Scheduled Opening. A contractor may by written request withdraw its quote after scheduled opening if there is reasonable proof that an inadvertent mistake was made and the correction cannot be determined with reasonable certainty.
- 6.9 Correction of Quote before Scheduled Opening. If a contractor withdraws its quote and resubmits it with revisions, the revisions should be clearly identified and initialed by the Contractor. Any corrections must be completed off the premises.
- 6.10 Correction after Scheduled Opening. ODH may permit a contractor alleging an inadvertent error to correct its quote after opening, only if the mistake and the correction are clearly evident from the quote and correction does not affect the amount of the quote or otherwise give the Contractor an unfair competitive advantage.
- 6.11 Quotes are Firm for 90 Days. Unless stated otherwise, once opened all Quotes are irrevocable for ninety (90) days. Beyond ninety (90) days, the contractor will have the option to honor their Quote or make a written request to withdraw their Quote from consideration.
- 6.12 Contractor May Request Clarification. If a contractor discovers an inconsistency, error or omission in this RFQ, the Contractor should request clarification from ODH Office of Procurement Services. Such clarification may be

made only through the internet. No other form of clarification is acceptable. Failure of contractor to comply may result in the Contractor being deemed not responsive.

- 6.13 ODH Modifications to the RFQ. When it is necessary to modify an RFQ, ODH does so by written addendum only.
- 6.14 Rejected Quotes. ODH may reject any quote in whole or in part, if any of the following circumstances are true:
- 6.14.1 Quotes are not in compliance with the requirements stated in the RFQ.
 - 6.14.2 The price is excessive in comparison with market conditions or with the available funds of the Agency.
 - 6.14.3 ODH determines that awarding any item is not in the best interest of the Agency.
- 6.15 Quote Preparation. ODH assumes no responsibility for costs incurred by the Contractor prior to the award of the Contract resulting from this RFQ.
- 6.16 Damages Arising from RFQ Specifications. A contractor may not be compensated for damages arising from inaccurate or incomplete information in the RFQ, specifications or from inaccurate assumptions based upon the specifications.
- 6.17 Unit Costs. Contractors shall not insert a unit cost of more than two (2) digits to the right of the decimal point. Digits beyond the two (2) will be dropped and not used in the evaluation of the Quote.
- 6.18 Responsive Contractor. A contractor is responsive if its quote responds to the RFQ completely and contains no irregularities or deviations from the RFQ that would affect the quote or otherwise give the Contractor an unfair advantage.
- 6.19 Responsible Contractor. ODH will determine if a contractor is responsible using the following factors:
- 5.17.1 Experience of the contractor.
 - 5.17.2 Contractor's financial condition.
 - 5.17.3 Contractor's conduct and performance on previous contracts.
 - 5.17.4 Contractor's facilities.
 - 5.17.5 Contractor's management skills.
 - 5.17.6 Contractor's ability to execute the contract properly.
 - 5.17.7 Review of Federal and State debarment lists.
- 6.20 Estimated Usage. Unless otherwise stated, the usage indicated for each item(s) are to be considered as estimates only and should be considered as information relative to potential purchases that may be made from the contract. ODH makes no representation or guarantee as to the actual amount of the items(s) to be purchased.
- 6.21 Information Requested. ODH may request additional information to evaluate a contractor's responsiveness to the RFQ or to evaluate a contractor's responsibility. If a contractor does not provide the requested information, it may adversely impact ODH evaluation of the Contractor's responsiveness or responsibility.
- 6.22 Samples. ODH may require contractors to provide samples or examples of work, at the Contractor's expense. Samples must be clearly identified by the Contractor, the RFQ number, and the item the sample represents. ODH will return samples that are not destroyed in testing, at the Contractor's expense, upon the Contractor's timely request. ODH may keep the samples of the Contractor awarded the contract until the completion of the contract.
- 6.23 ODH Withdrawal of the RFQ. ODH reserves the right to withdraw the RFQ at any time prior to the award the contract.
- 6.24 Contract Evaluation. The ODH Project Manager will evaluate the quotes received and determine the quote that fulfills the project in the best interests of ODH.
- 6.25 Contract Negotiation. It is at the discretion of DOH whether to permit negotiations. A contractor must not submit a quote assuming that there will be an opportunity to negotiate any aspects of the RFQ. When it has been determined that it is in the Agency's best interest to conduct negotiations, ODH may request a submission of a best and final quotation.

- 6.26 Contract Contents. If this RFQ results in a Contract award, the Contract will consist of this RFQ, along with attachments, addenda, purchase orders, change orders, and terms and conditions. ODH reserves the right to award multiple contracts under this RFQ.
- 6.27 Contract Award. ODH plans to award the Contract based on the quote that is in the best interests of the Agency.
- 6.28 Contractor Start Date. ODH expects the Contractor to commence work on the contract start date. If the Contractor is unable or unwilling to commence work, ODH reserves the right to cancel the award and resume the evaluation process with the next most advantageous quote.
- 6.29 Non-Collusion Certification. By the signature affixed on page 2 of the attached proposed Contract, the Contractor certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing quote, that such quote is genuine and not collusive or sham; that Contractor has not colluded, conspired or agreed, directly or indirectly, with any contractor or person, to submit a sham quote; or colluded or conspired to have another not quote; and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the quote price of its quote or any other contractor, or to fix any overhead, profit or cost element of the quote price, or of that of any other contractor, to secure any advantage against any contractor or any person or persons interested in the proposed Contract and that all statements contained in the quote are true; and further, that the Contractor has not, directly or indirectly, submitted this quote, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.
- 6.30 Scope of Work and Specifications. ODH is authorized to prepare scope of work and specifications to obtain supplies and services. The purpose of the scope or work or deliverables is to describe the supplies or services to be purchased and will serve as a basis for comparison of quote responses.

**OHIO DEPARTMENT OF HEALTH
CONTRACT**

This Contract is between

Ohio Department of Health ("ODH")
Bureau of Environmental Health and Radiation Protection
Mandy Burkett, ("ODH Contract Manager")
246 North High Street
Columbus, Ohio 43215
(614) 644-7553
mandy.burkett@odh.ohio.gov

AND

("Contractor")
("Authorized Representative")

For the purpose of this Contract, the terms "Party" or "Parties" may be used to refer to both ODH and/or Contractor, individually or collectively. In order to be valid, this Contract must be signed by Contractor and returned along with required attachments (see §3) to ODH, ATTN: Carol Cook, Contract Unit, 246 North High Street, Columbus, Ohio 43215, within fourteen (14) days of receipt at the above address.

1. CONTRACT TERM. Subject to §6 and other terms and conditions specified in this Contract:

1.1. "Contract Beginning Date" shall be defined as the date indicated here, or the date of Contract execution by both Parties, whichever is later:

7/1/2015

1.2. "Contract Ending Date" shall be defined as the date indicated here, the date of Contract termination or the date to which the Contract has been extended:

6/30/2016

1.3. "Contract Period" shall be defined as the time between the "Contract Beginning Date" and "Contract Ending Date."

2. CONTRACT FUNDING.

2.1. "Contract Funding Source" shall be defined as:

GRF

2.2. Grant Award Number:

NA

2.3. CFDA Number:

NA

2.4. Ohio Statute Authorizing Administration of the Program:

Ohio Revised Code ("O.R.C.") 3701.84

3. **ATTACHMENTS.** Attachments specified in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. PLEASE READ CAREFULLY AND INITIAL EACH PARAGRAPH BELOW:

Contractor affirms that they have read and understand and agree to be bound by the Contract Terms and Conditions in §6 below;

If Contractor is not currently a registered vendor with the State of Ohio, Contractor must submit a Vendor Information Form to Ohio Shared Services, Division of the Office of Budget and Management, provided at http://media.obm.ohio.gov/oss/documents/New+Vendor+Information+Form_11+15+2013.pdf;

Contractor must complete and submit a copy of its Request for Taxpayer Identification Number, Form W-9, to Ohio Shared Services, Division of the Office of Budget and Management, provided at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>;

Contractor must complete and submit with this Contractor an Affirmative Action Plan pursuant to §6.9. An example plan is provided at <http://das.ohio.gov/LinkClick.aspx?fileticket=iKMHhXmx6MU%3d&tabid=133>; In addition, said plan must be filed with the Department of Administrative Services Equal Opportunity Division at: <http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification/tabid/133/Default.aspx>;

Contractor must complete and submit with this Contract a Standard Affirmation and Disclosure provided at http://procure.ohio.gov/pdf/Standard_Affirmation_and_Disclosure_form.pdf; and,

Contractor must submit with this Contract verification of any required licenses, registrations or other qualifications required by this Contract or relevant Request for Proposal.

4. **ATTACHMENTS, EXCEPTIONS, DISCLAIMERS and/or MATERIAL BREACH.** Attachments specified in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract.

4.1. NA

IN WITNESS WHEREOF, the Parties by signing below indicate their agreement to this Contract.

CONTRACTOR

OHIO DEPARTMENT OF HEALTH

[Signature, Blue Ink Please]

Richard Hodges, MPA, Director of Health

[Print Name & Title]

Date

Date

Remainder of Page Left Intentionally Blank. Scope of Work, Deliverable & Compensation & General Terms and Conditions Immediately Follow this Page.

5. DELIVERABLES & COMPENSATION.

	<p align="center">Deliverables (Due Date and Compensation only noted if Applicable or Required)</p>	<p align="center">Due Date</p>	<p align="center">Compensation</p>
	<p>During the Contract Period, ODH and Contractor agree to the following:</p>		
<p>5.1.</p>	<p>Collection of all reports made to the Ohio Smoke Free Workplace Enforcement Line.</p>	<p align="center">6/30/2016</p>	
<p>5.2.</p>	<p>Successful entry of all reports into Ohio Smoke Free Workplace web-based application.</p>	<p align="center">6/30/2016</p>	
<p>5.3.</p>	<p>Weekly report of # and duration of calls taken.</p>	<p align="center">6/30/2016</p>	
<p>5.4.</p>			
<p>5.5.</p>			
<p>5.6.</p>			
<p>5.7.</p>			
<p>5.8</p>			
	<p align="center">TOTAL CONTRACT AMOUNT</p>		

Remainder of Page Left Intentionally Blank. Terms & Conditions Immediately Follow this Page.

6. CONTRACT TERMS AND CONDITIONS.

- 6.1. Mutual Promises & Covenants. In consideration of the mutual promises expressed in this Contract and intending to be legally bound, Contractor agrees to perform, and ODH agrees to pay Contractor, in accordance with the terms of this Contract.
- 6.2. Purpose of Contract. Contractor will provide ODH goods or services in accordance with the terms of this Contract.
- 6.3. Scope of Work, Deliverables, and Compensation. Contractor shall provide work, services, products and deliverables in the time and manner and for the compensation specified in §5 and any attachment specified or incorporated into this Contract.
- 6.3.1. Compensation. In consideration of the Scope of Work and Deliverables specified in §5, ODH agrees to pay the Compensation as set forth in §5 for a total not to exceed the Total Contract Amount. ODH will compensate Contractor upon the successful completion of each deliverable, in accordance with §5 of this Contract.
- 6.3.2. Total Contract Amount. The Total Contract Amount, as indicated in §5, includes the cost for all services, travel, or any other expenses that Contractor may incur as a result of Contractor's performance of this Contract.
- 6.3.2.1. In the event that §5 specifically allows ODH to reimburse Contractor for travel and other related expenses, ODH will reimburse Contractor for those expenses in accordance with this section. Travel and travel-related expenses must be pre-approved by Contract Manager in advance of travel and may not exceed the amounts specified for the State Fiscal Year. Contractor may invoice ODH for reimbursement of travel and travel-related expenses no later than thirty days after the travel occurred. Contractor must invoice travel expenses separate from invoices for services and work. Reimbursement for authorized travel and other related expenses shall be limited to actual and necessary expenses as specified in the O.R.C. 126.31 and O.R.C. 126.32 and the provisions of the Ohio Administrative Code ("O.A.C.") 126-1-02. Contractor shall submit all claims/travel invoices to the Contract Manager for approval prior to submitting a claim for reimbursement. ODH will not reimburse Contractor for any other expenses except as specifically provided in this Contract. For the purpose of determining allowable travel expenses, Contractor's headquarters shall be Franklin County, Ohio.
- 6.3.2.2. Contractor shall not submit claims for expenses which do not meet the requirements specified or directly related to work in §5.
- 6.3.3. Contractor shall monitor the work under this Contract and shall not accept an assignment under this Contract if it will cause or is reasonably likely to cause the Compensation specified in §5 to exceed the Total Contract Amount for the Contract Period.
- 6.3.4. Contractor waives the interest provisions of O.R.C. 126.30.
- 6.3.5. Subject to the provisions of O.R.C. 126.07 and O.R.C. 131.33, which shall at all times govern this Contract, ODH represents that it intends to maintain this Contract for the full Contract Period set forth in this Contract and has no reason to believe that it will not have sufficient funds to enable it to make all payments due. ODH further represents that it will use best efforts to obtain the appropriation of any necessary funds during the Contract Period.
- 6.3.6. Funds Availability. Contractor understands and agrees that this Contract is contingent upon the availability of lawful appropriations by the Ohio General Assembly and/or if applicable another Contract Funding Source. If the Ohio General Assembly or other Contract Funding Source fails at any time to continue funding ODH for the Compensation specified in this Contract, this Contract is terminated as of the date funding expires without further obligation of ODH, State of Ohio, or any other Contract Funding Source.
- 6.3.7. ODH will not compensate Contractor for any work performed prior to receipt of written notification from the ODH Contract Manager that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met ODH will not compensate Contractor for any work performed after the Contract Ending Date, as applicable.

6.3.8. Invoices. Contractor shall invoice ODH in accordance with §5 for work or services Contractor provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to ODH, ATTN: Accounts Payable, P.O. Box 118, Columbus, Ohio 43216-0118. ODH will reimburse Contractor within forty-five (45) days of receipt of a valid invoice for the amount of payment due. ODH shall return any invalid or incomplete invoice to Contractor within fifteen (15) days after ODH receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this Contract shall be submitted by Contractor no later than thirty (30) days after the end of the Contract Period.

6.3.8.1. Electronic Commerce Program. The State of Ohio is an active participant in the E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the Contractor by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio. Information regarding E-Commerce is available on the Office of Budget and Management's website at <http://obm.ohio.gov/sectionpages/electroniccommerce/>.

6.3.9. Contractor shall furnish its own support staff and services as necessary for the satisfactory performance of this Contract. Unless otherwise specified in this Contract, ODH will not provide any staff, services, or material to Contractor for the purpose of assisting Contractor's performance.

6.3.10. ODH 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. Upon such notice and within ten (10) days after receipt of instructions, Contractor shall comply with such instructions and fulfill such requests to the satisfaction of ODH. It is expressly understood by the Parties that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in this Contract and are not intended to amend or alter this Contract or any part thereof. The Contract Manager will communicate all such instructions and requests to Contractor.

6.3.11. Attachments. Attachments and documents referenced in this Contract are made a part hereof, and are incorporated as terms and conditions of this Contract. In the event of a conflict of terms, the terms and conditions of this Contract shall take precedence over any conflicting terms.

6.4. Time of Performance & Amendments.

6.4.1. Contract Period; Extension. Upon approval by ODH and, if required, the Controlling Board, this Contract shall be effective on the Contract Beginning Date and shall remain in effect until the Contract Ending Date. Upon mutual consent of both parties, this Contract may be renewed or extended past the Contract Ending Date, subject to the same terms and conditions of this Contract and subject to any federal and state directives, regulations, laws, Request for Quote or Request for Proposals relating to the subject matter of this Contract. Any extensions or renewals are subject to sections 6.3.6 and 6.4.3.

6.4.1.1. Biennium Year. In the event that the term of this Contract Period spans the State of Ohio biennium ending on June 30th of an odd-numbered year, e.g. June 30, 2015, then this Contract will terminate on the last day of that biennium. At that time, ODH may unilaterally extend the Contract by giving Contractor written notice. Until such notice is given, Contractor is subject to §6.4.3 below.

6.4.2. Amendments. This writing constitutes the entire agreement between the Parties with respect to all matters herein. This Contract may be amended only by a writing signed by both Parties. However, it is agreed by the Parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Contract, without the necessity for executing written amendments. Any written amendments to this Contract shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.

6.4.3. Pursuant to O.R.C. 126.07, this Contract is not valid nor enforceable in any fiscal year unless the director of budget and management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, in an amount at least equal to the current fiscal year funding specified for each fiscal year that comprises the Total Contract Amount. Contractor shall not perform nor charge ODH for any work performed by Contractor in the time period prior to receiving written notification from ODH that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have

been met. Contractor shall neither perform work nor submit an invoice for payment for any Contract performance after the Contract Ending Date.

- 6.5. Suspension and Termination. ODH may suspend or terminate this Contract for any reason thirty (30) days after delivery of written notice to Contractor. ODH may suspend or terminate this Contract immediately after delivery of written notice to Contractor if ODH discovers any illegal conduct on the part of Contractor; discovers a violation of §6.8 of this Contract regarding Conflict of Interest and Ethics Laws; violation of §6.16 regarding a Drug Free Workplace; is subject to a loss of funding as specified in §6.3.6; discovers that Contractor or any of its sub-Contractors has performed any services under this Contract outside the United States and is not in compliance with Executive Order 2011-12K "Governing the Expenditure of Public Funds for Offshore Services" in §6.13; or discovers or is notified that a petition in bankruptcy or similar proceeding has been filed by or against Contractor. If at any time during the contractual period a bankruptcy or similar proceeding has been filed by or against Contractor, Contractor shall immediately notify ODH of the filing.
- 6.5.1. Contractor to Cease Work and Other Contract Activities. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, suspend or terminate any subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this Contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODH may require.
- 6.5.2. Determining Compensation after Contract Suspension or Termination. With the exception of a material breach as indicated in §4, in the event of suspension or termination under this Contract, Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by ODH based on the compensation rate set forth in §6.3, less any funds previously paid by or on behalf of ODH. In the case of services for which Contractor's compensation is based upon a fixed fee per deliverable, compensation shall be based on a reasonable percentage of the total services performed, as determined by ODH, less any funds previously paid by or on behalf of ODH. ODH shall not be liable for any further claims, and the claims submitted by Contractor shall not exceed the total amount of compensation allowed by this Contract.
- 6.6. Breach or Default.
- 6.6.1. Material Breach. Upon a Material Breach of the Contract, as designated in §4 and §6.13, ODH may unilaterally terminate this Contract without compensation to Contractor as a material breach is understood by the Parties to be so significant that it has destroyed the value of the Contract and, due to the nature of the services that ODH offers the State of Ohio, a Material Breach would undermine the sole purpose of the Contract.
- 6.6.2. Upon breach or default by Contractor of any of the provisions, obligations or duties provided for in this Contract, ODH may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODH retains the right to exercise all remedies provided for in this Contract.
- 6.6.3. If ODH or Contractor fail to perform an obligation or obligations under this Contract and thereafter such failure is waived by the other party; such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by ODH shall not be effective unless it is in writing and signed by the Director of Health or his or her designee, except that Contract Manager may agree in writing to non-substantial changes to §5, such as changes in form, format, deadlines, or other minimal changes that do not diminish the value of the specified work or deliverable.
- 6.6.4. A breach or default based upon Contractor's failure to comply with §6.13 Offshore Outsourcing is subject to that section with regard to Contract termination, sanctions, and damages.
- 6.7. Independent Contractor. Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee (for purposes of O.R.C. Chapter 145) solely on the basis of this Contract. No agency, employment, joint venture or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Contract. Inasmuch as ODH is interested in Contractor's end product, ODH does not control the manner in which Contractor performs this Contract. ODH is not liable for the workers' compensation or unemployment compensation payments required by O.R.C. Chapters 4123 and 4141, respectively. In addition, Contractor assumes responsibility for tax liabilities that

result from compensation paid to Contractor by ODH. ODH will report any payment made under this Contract to the Internal Revenue Service on Form 1099. Additionally, no provision contained in this Contract shall be construed as entitling Contractor to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of ODH or to become a member of the Public Employees Retirement System (O.R.C. Chapter 145).

6.8. Conflict of Interest and Ethics Laws.

- 6.8.1. Neither Contractor nor any officer, member or employee of Contractor shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.
- 6.8.2. Contractor hereby covenants that Contractor, and any officer, member, or employee of Contractor, have no interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this Contract.
- 6.8.3. Contractor shall not promise or give to any ODH employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. Contractor shall not solicit an ODH employee to violate any ODH rule or policy relating to the conduct of contracting Parties or to violate O.R.C. 102.03 to 102.04 or O.R.C. 2921.42.
- 6.8.4. Contractor hereby covenants that Contractor and any officer, member or employee of Contractor are in compliance with O.R.C. 102.04 and that if Contractor is required to file a statement pursuant to O.R.C. 102.04(D)(2), such statement has been filed with the ODH General Counsel in addition to any other required filings.
- 6.8.5. Contractor hereby certifies compliance with the executive agency lobbying requirements of O.R.C. 121.60 to 121.69.
- 6.8.6. Contractor hereby certifies and affirms that, as applicable to Contractor, no party listed in Division (I) or (J) of O.R.C. 3517.13 or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 (One Thousand Dollars) to the Governor or to his campaign committees. If it is determined that Contractor's certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, Contractor shall return to ODH all monies paid to Contractor under this Contract. The provisions of this section shall survive the expiration or termination of this Contract.

6.9. Nondiscrimination and Equal Employment Opportunity.

- 6.9.1. In carrying out this Contract, Contractor shall comply with all applicable State of Ohio and Federal laws relating to nondiscrimination as those laws may be amended from time to time, including but not limited to the following:
 - 6.9.1.1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), which requires reasonable steps to ensure that LEP persons have meaningful access to programs (see www.lep.gov), and Health and Human Services ("HHS") implementing regulations at 45 CFR part 80.
 - 6.9.1.2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, and HHS implementing regulations at 45 CFR part 86.
 - 6.9.1.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps in the provision of benefits or services as well as employment, and the HHS implementing regulations are codified at 45 CFR parts 84 and 85.
 - 6.9.1.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age and the HHS implementing regulations codified at 45 CFR part 91.

- 6.9.1.5. If grant funding is from the U.S. Department of Justice (“DOJ”), also comply with the nondiscrimination provision of the Violence Against Women Act of 1994, as amended (42 U.S.C. § 13925(b)(13)), which prohibits discrimination on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability in the provision of services and employment practices; 28 C.F.R. pt. 42, subpt. C (the DOJ regulations implementing Title VI of the Civil Rights Act of 1964); 28 C.F.R. pt. 54 (the DOJ regulations implementing Title IX of the Education Amendments of 1972); 28 C.F.R. pt. 42, subpt. G (the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973); 28 C.F.R. pt. 42, subpt. I (the DOJ regulations implementing the Age Discrimination Act of 1975); 28 C.F.R. pt. 38 (the DOJ regulations on the Equal Treatment for Faith-Based Organizations); Ex. Order No. 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations); and Ex. Order No. 13559 (Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations).
- 6.9.1.6. Prohibitions against retaliation against individuals for taking action or participating in an action to secure rights provided in State and Federal laws relating to nondiscrimination.
- 6.9.1.7. Contractor hereby certifies that Contractor is in compliance with O.R.C. 125.111(B) and has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons. If the Total Contract Amount of this Contract is equal to or more than \$2,500.00 (Two Thousand Five Hundred Dollars) then 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 Ohio Department of Administrative Services. Contractor shall incorporate the foregoing State of Ohio and Federal laws relating to nondiscrimination in all of its contracts for performance of any of the work prescribed in this contract, and shall require all of its subcontractors to incorporate these requirements in all subcontracts for such work.
- 6.10. “Sweatshop Free” Certification. Contractor hereby certifies that all facilities used for the production of supplies or performance of services offered in this Contract is in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by Contractor in furnishing the supplies or services pursuant to this Contract. If it is determined that Contractor's certification of this requirement is false or misleading, then Contractor understands that it shall be grounds for the termination of this Contract and may result in the loss of other contracts or grants with the State of Ohio.
- 6.11. Records, Documents and Information. All records, documents, writings or other information produced or used by Contractor in the performance of this Contract shall be treated according to the following terms:
- 6.11.1. All ODH information which, under the laws of the State of Ohio, is classified as public or private will be treated as such by Contractor. Where there is a question as to whether information is public or private, ODH shall make the final determination. Contractor shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. Contractor agrees to be bound by the same standards of confidentiality that apply to the employees of ODH and the State of Ohio. If at any time during the contract period a proceeding has been filed by or against Contractor which would compel disclosure of private information under this Contract, Contractor shall immediately notify ODH of the filing. The terms of this section shall be included in any subcontracts executed by Contractor for work under this Contract.
- 6.11.2. All proprietary information of Contractor shall be held to be strictly confidential by ODH. Proprietary information is information which, if made public, would put Contractor at a disadvantage in the market place and trade of which Contractor is a part. Contractor is responsible for notifying ODH of the nature of the information prior to its release to ODH. ODH reserves the right to require reasonable evidence of Contractor's assertion of the proprietary nature of any information to be provided.
- 6.11.3. All records relating to costs, work performed and supporting documentation for invoices submitted to ODH by Contractor shall be retained and made available by Contractor for audit by the State of Ohio (including, but not limited to, ODH, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this Contract. If an audit, litigation, or other action is initiated during this time period, Contractor shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.

- 6.12. Disclosure of Personal Health Information. Contractor hereby agrees that the information provided or made available by ODH shall not be used or disclosed other than as permitted or required by this Contract or as required by law. Contractor will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by this Contract. Contractor shall comply with 45 C.F.R.164.504(e)(2)(ii). Contractor shall immediately report to ODH any discovery of use or disclosure of information not provided for or allowed by the Contract. Contractor hereby agrees that anytime information is provided or made available to any sub-Contractor or agent, Contractor must enter into a subcontract with the sub-Contractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of information as contained in this Contract. Contractor must obtain ODH approval prior to entering into such agreements. Further, Contractor agrees to make available and provide right of access to an individual of their protected health information when that protected health information is obtained in the performance of Contractor's obligations under this Contract.
- 6.13. Offshore Outsourcing and Executive Order 2011-12K. Contractor affirms to have read and understands Executive Order 2011-12K "Governing the Expenditure of Public Funds for Offshore Services" (see <http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>). In addition, if the purpose of this Contract is to acquire services for compensation, Contractor must complete and execute the Standard Affirmation and Disclosure Form for said Executive Order 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. Contractor also affirms, understands, and agrees to immediately notify ODH of any change or shift in the location(s) of services performed by Contractor or its sub-Contractors under this Contract, and no services shall be changed or shifted to a location(s) that is outside of the United States.
- 6.13.1. Termination, Sanction, Damages. If Contractor or any of its sub-Contractors 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. ODH is not obligated to pay and shall not pay for such services. If Contractor or any of its sub-Contractors perform any such services, Contractor shall immediately return to ODH all funds paid for those services. ODH may also recover from Contractor all costs associated with any corrective action ODH may undertake, including but not limited to an audit or a risk analysis, as a result of Contractor performing services outside the United States.
- 6.13.1. ODH may, at any time after the breach, terminate the Contract, upon written notice to Contractor. ODH 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.
- 6.13.2. If ODH determines that actual and direct damages are uncertain or difficult to ascertain, ODH in its sole discretion may recover a payment of liquidated damages in the amount of 1% of the value of the Contract.
- 6.13.3. ODH, in its sole discretion, may provide written notice to Contractor of a breach and permit Contractor to cure the breach. Such cure period shall be no longer than fourteen (14) calendar days. During the cure period, ODH may buy substitute services from a third party and recover from Contractor any costs associated with acquiring those substitute services.
- 6.13.4. Notwithstanding ODH permitting a period of time to cure the breach or Contractor's cure of the breach, ODH does not waive any of its rights and remedies provided ODH in this Contract, including but not limited to recovery of funds paid for services Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.
- 6.14. Assignment. Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of ODH. Any assignment or delegation not consented to may be deemed void by the ODH.
- 6.15. Drug Free Workplace. Contractor shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Contractor shall make a good faith effort to ensure that all employees of Contractor do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.
- 6.16. Compliance.
- 6.16.1. Contractor affirmatively represents and warrants to ODH that it is not subject to a finding for recovery under O.R.C. 9.24 or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or

otherwise qualifies under that section. Contractor further affirmatively represents and warrants to ODH that it is not debarred or suspended from entering into state of Ohio contracts pursuant to O.R.C. 125.25 and is not subject to exclusion, disqualification or ineligibility as defined in 2 C.F.R.180.110. Contractor agrees that if this representation and warranty is deemed false, the Contract will be void *ab initio* as between the Parties to this Contract, and any funds paid by ODH hereunder shall be immediately repaid to ODH, or an action for recovery may be immediately commenced by ODH for the recovery of said funds.

- 6.16.2. Contractor certifies that Contractor is not federally debarred from participating in government contracts funded by federal money as described in 2 C.F.R. 180.220. If at any time during the contractual period Contractor is federally debarred from participating in government contracts funded by federal money, for whatever reason, Contractor shall immediately notify ODH of the debarment.
- 6.16.3. Contractor certifies that all approvals, licenses, registrations or other qualifications necessary to conduct business where the services are performed have been obtained and are operative. If at any time during the contractual period Contractor becomes disqualified from conducting business in Ohio, for whatever reason, Contractor shall immediately notify ODH of the disqualification.
- 6.17. Limitation of Liability. Contractor agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any responsibility for professional acts or omissions onto ODH; and ODH agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Contract, and nothing in this Contract shall be interpreted or construed to place any such responsibility on the Contractor. ODH's liability for damages, whether in contract or in tort, shall not exceed the Total Contract Amount or the amount of direct damages incurred by Contractor, whichever is less, and is the Contractor's sole and exclusive remedy for ODH's failure to perform its obligations under this Contract. In no event shall ODH be liable for any indirect or consequential damages, including loss of profit, even if ODH knew or should have known of the possibility of such damages. Neither party is responsible to the other party for nonperformance or delay in performance of the terms of this Contract due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.
- 6.18. Insurance. Contractor will provide, at its own expense, Workers' Compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be performed. Contractor may be required to show proof of insurance upon request by ODH. Contractor also will provide for its employees performing work under this Contract employer's liability insurance, and personal injury, bodily injury, and property damage liability insurance, including automobile coverage with personal injury and bodily injury coverage in the amount of at least \$100,000.00 per person, \$300,000.00 per occurrence. In lieu of providing the policies of insurance in the amounts specified in this section, Contractor instead may elect to self-insure such risk in accordance with the laws of this state, based upon a good-faith analysis of the potential liability as it relates to the work to be performed under this Contract, provided that contractor is one of the following:
- 6.18.1. A "state institution of higher education" as defined in O.R.C. [3345.12\(A\)\(1\)](#), a community college established under O.R.C. Chapter 3354, a state community college established under O.R.C. Chapter 3358, a university branch established under O.R.C. Chapter 3355, or technical college established under O.R.C. Chapter 3357;
- 6.18.2. A "state agency", which means a department, bureau, board, commission, office, agency, institution or other organized body or instrumentality established by the constitution and laws of the state of Ohio for the exercise of any function of state government; or
- 6.18.3. A "political subdivision" of this state, which means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.
- 6.19. Rights in Deliverables, Data and Copyrights. Any intellectual property or copyrightable materials produced specifically for and as a deliverable under the terms of this Contract, including any documents, data, photographs and negatives, electronic reports, records, software, source code, or other media, shall become the property of ODH, which shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. This section does not apply to any preexisting materials owned by Contractor. Contractor shall not obtain copyright, patent, or other proprietary protection for the Work or Deliverables under this Contract. ODH grants Contractor an unlimited license to use work and materials produced by Contractor under this Contract, including the right to publish the results of any work performed under this Contract.

- 6.19.1. In the event that the Contract Funding Source is federal funding, in whole or in part, such license is subject to the royalty-free, non-exclusive and irrevocable license to such material retained by the United States government. Further, the work must state: "This publication was made possible by Grant Number [insert grant number] from [insert federal funding agency]. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of [insert federal funding agency]."
- 6.19.2. In the event that the Contract Funding Source is funding from Health and Human Services, in whole or in part, the work must state: "*This project is/was supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) under grant number and title for grant amount (specify grant number, title, total award amount and percentage financed with nongovernmental sources). This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.*"

Contractor shall not include in any Deliverable or Work any copyrighted matter, unless the copyright owner gives prior written approval to use such copyrighted matter.

- 6.20. Construction. This Contract is governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the Parties hereto in connection with disputes concerning validity and enforcement of this Contract. If any portion of this Contract is found to be unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this Contract shall not be affected thereby, provided that the absence of the unenforceable provision does not render impossible the performance of the remainder of this Contract.
- 6.21. Trafficking Victims Act. In carrying out this Contract, Contractor, its employees, subcontractors and their employees shall comply with Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104); and is now located at 2 CFR Part 175 during the term of this Contract. Contractor must include this provision in its contracts and subcontracts under this Contract. Contractor must inform ODH immediately of any information regarding violation of the foregoing. Contractor understands that its failure to comply with this provision may subject ODH to loss of federal funds. Contractor agrees to compensate ODH for any such funds lost due to its failure to comply with this condition, or the failure of its subcontractors to comply with this condition.