

# INVITATION TO BID

INVITATION TO BID (ITB) NUMBER: DRCB-14-1006

DATE ISSUED: August 7, 2013

The Ohio Department of Rehabilitation and Correction (DRC)  
issues this ITB for:

Third Party Administrator (TPA) – Electricity Aggregation Services

INQUIRY PERIOD BEGINS: August 7, 2013

INQUIRY PERIOD ENDS: August 15, 2013

BID DUE DATE: August 20, 2013

BID DUE TIME: 3:00 P.M. Eastern Standard Time

**BID SHOULD BE LABELED TPA-ELECTRICITY AGGREGATION ITB**

**AND DELIVERED TO:**

c/o Barb Johnson, Contract Administrator  
ODRC Operation Support Center Mail Room  
770 West Broad Street 1<sup>ST</sup> Floor  
Columbus, OH 43222

**BID OPENING LOCATION:**

**(Do not hand carry bids into the Bid Opening Room, they will be rejected.)**

DRC Operation Support Center Cafeteria  
770 West Broad Street, 1<sup>st</sup> Floor  
Columbus, OH 43222

**BID OPENING DATE AND TIME:**

August 20, 2013 at 3:00 P.M.  
Eastern Standard Time

This ITB consists of five (5) numbered Parts and six (6) lettered exhibits, totaling 31 consecutively numbered pages. Please verify that you have a complete copy.

**Part One      Executive Summary**

**Purpose.** The Ohio Department of Rehabilitation and Correction (ODRC) is seeking competitive sealed Bids via this Invitation to Bid (ITB) from qualified TPA Electricity Aggregators (hereinafter referred to as "Bidders") for Third Party Administrator (TPA) – Electric Aggregator. If an acceptable Bid is made in response to this Invitation To Bid (hereinafter referred to as "ITB"), the ODRC may authorize the selected Bidder to perform the services. Once selected, the term of the service will be for two years with two optional two-year renewals. It will be the selected TPA Electricity Aggregator's obligation to ensure that the personnel the TPA Electricity Aggregator provides are qualified to perform their portions of the service.

**Calendar of Events**

The schedule for the ITB is given below to assist the Bidder in responding to this ITB, The following is the ITB schedule:

ITB Issued:	August 7, 2013
Inquiry Period Begins*:	August 7, 2013
Inquiry Period Ends:	August 15, 2013
Bid Due Date:	August 20, 2013
Tentative Selection:	September 5, 2013

**Structure of ITB**

The ITB consists of the following Parts and Exhibits:

Part One	Executive Summary
Part Two	General Instructions including Inquiry Instructions*
Part Three	Scope of Services
Part Four	Evaluation of Bids
Part Five	Requirements For Bids
Exhibit A.	Fee Proposal
Exhibit B.	Bidder Qualifications and Past Performance
Exhibit C.	Proof of Worker's Compensation Insurance
Exhibit D.	Conflict of Interest Statement
Exhibit E.	Statements of Compliance with Executive Order 2011-12K and Exhibit F Proposed Contract including Attachment One
Exhibit F.	Proposed Contract including Attachment One

**Contract Monitor**

Following Contract award, a Contract Monitor shall be the Contractor's primary point of contact for matters relating to the Contractor's performance. The Contract Monitor may be contacted as follows:

Name:	Jenny Hildebrand	Phone:	614-752-1072
Title:	Conservation Coordinator	Fax:	614-728-1578
Address:	Operation Support Center Office of Administration 770 West Broad Street Columbus, OH 43222	Email:	<a href="mailto:Jenny.Hildebrand@odrc.state.oh.us">Jenny.Hildebrand@odrc.state.oh.us</a>

## Part Two      General Instructions

**Inquiries.** Potential Bidders may make inquiries regarding this ITB any time during the Inquiry Period listed in the Calendar of Events (see Part One.) The ODRC ITB Representative Barbara R. Johnson of the ODRC Division of Business Administration shall coordinate inquiry responses in matters relating to this ITB and the Bidding process.

To make an inquiry, Bidders must use the following process:

- Access the State Procurement web site at <http://www.ohio.gov/procure>;
- From the Navigation Bar on the left, select “Find it Fast”;
- Select “Doc/Bid/Schedule #” as the Type;
- Enter the ITB Number found on Page 1 of the document (ITB Numbers begin with DRC followed by a number);
- Click the “Find It Fast” button;
- On the document information page, click the “Submit Inquiry” button;
- On the document inquiry page, complete the required “Personal Information” section by providing:
  - First and last name of the prospective bidder’s representative who is responsible for the inquiry;
  - Name of the prospective bidder;
  - Representative’s business phone number; and
  - Representative’s e-mail address.
- Type the inquiry in the space provided including:
  - A reference to the relevant part of this ITB;
  - The heading for the provision under question; and
  - The page number of the ITB where the provision can be found.
- Click the “Submit” button.

Bidders submitting inquiries will receive an immediate acknowledgement that their inquiry has been received as well as an e-mail acknowledging receipt. Bidders will not receive a personalized e-mail response to their question nor will they receive notification when the question has been answered.

Bidders may view inquiries using the following process:

- Access the State Procurement web site at <http://www.ohio.gov/procure>;
- From the Navigation Bar on the left, select “Find it Fast”;
- Select “Doc/Bid/Schedule #” as the Type;
- Enter the ITB Number found on Page 1 of the document (ITB Numbers begin with DRC followed by a number);
- Click the “Find It Fast” button;
- On the document information page, click the “View Q & A” button to display all inquiries with responses submitted to date.

The ODRC will try to respond to all inquiries within 72 hours, excluding weekends and State holidays. But the ODRC will not respond to any inquiries received after 8:00 a.m. on the Inquiry Period End Date.

Bidders who attempt to seek information or clarifications verbally will be directed to use the process as described herein. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with ODRC staff or any other agency of the State to discuss the bid may result in the Bidder being deemed not responsive.

## **Part Two    General Instructions (continued)**

**Bid Due Date and Requirements.** Each Bidder must submit four complete, sealed, and signed copies of its Bid to the Project Representative, at the address listed on page one (1) with the outside of each envelope clearly marked "TPA Electricity Aggregator."

Bids must be received no later than 3:00 p.m. local time on the Bid Due Date. The ODRC ITB Representative **shall reject any Bids** or unauthorized Bid amendments submitted after the Bid Due Date. Each Bidder must carefully review the requirements of this ITB and the contents of its Bid. Once the Bid Due Date has passed, Bids cannot be altered, except as allowed by this ITB.

All Bids and other submitted material shall be the property of the ODRC and shall not be returned. The Bidder should not include proprietary information in a Bid because the ODRC maintains the right to use any materials or ideas submitted without compensation to the Bidder. Additionally, all Bids will be open to the public after the Bids are opened.

The ODRC will retain a copy of all Bids received as part of the Contract file for the term of the Contract and any subsequent renewals. After the State-scheduled retention period, the Institution may return, destroy, or otherwise dispose of the Bids and copies.

**Bid Instructions.** The ODRC wants clear and concise Bids, but Bidders should take care to completely answer questions and meet the ITB's requirements. Bids must demonstrate an understanding of the requirements and show experience providing like services as well as the ability to meet the service requirements.

The requirements for the Bid's contents and formatting are contained in Part Five of this ITB.

The State will not be liable for any costs incurred by any Bidder in responding to this ITB, even if the State does not award a Contract through this process. The ODRC reserves the right to decide not to select a Bidder for the services. It may also cancel this ITB and select a service provider through some other process or by issuing another ITB.

**Waiver of Defects.** The ODRC has the right to waive any defects in any Bid or in the submission process followed by a Bidder. But the ODRC will only do so if it believes that is in the ODRC's interests and will not cause any material unfairness to other Bidders.

**Amendments to Bids.** Amendments or withdrawals of Bids are allowed to be submitted until 3:00 p.m. local time on the Bid Due Date. Communications of amendments and withdrawals of bids shall be submitted exactly as the bid submittal instructions including the address, location, and method of delivery; and clearly marked with the subject of the bid. Indicate the amendment or withdrawal **INSIDE** the envelope. No amendments or withdrawals will be permitted to be submitted after the due date, except as expressly authorized by this ITB.

## **Part Three Scope of Services**

**Objective.** The objective of this ITB is to solicit Bids to engage the services of a knowledgeable third party administrator (TPA Electricity Aggregator) with expertise in the field of electric energy procurement and management, to secure electric services at the lowest rates for the eligible institutions. ODRC believes that the estimated annual ODRC “investor owned utility supplied” electricity usage exceeds Eighty Million kWh. The TPA Electricity Aggregator will be responsible for the development and management of an electric aggregation program for ODRC to provide an uninterrupted electric supply and maximize cost savings while providing management reports on the program and the savings.

The ODRC seeks a third party administrator model, in which the TPA Electricity Aggregator performs many of the administrative functions under the direction of the ODRC including usage analysis, marketing, development of a buying strategy, forecasting, nominating, bid preparation, and reporting. The TPA Electricity Aggregator must not be affiliated with a particular electric supplier or marketer, acting impartially in the best interest of the ODRC. Therefore, if an electrical supplier or affiliated company submits a proposal under this ITB and is selected to provide TPA Electricity Aggregator services, that supplier may not bid to supply electric energy to the ODRC under the proposed Contract.

This ITB provides details on what is required to submit a Bid, how the ODRC will evaluate the Bids and what will be required of the Bidder who is selected as the TPA Electricity Aggregator services.

### **SCOPE OF SERVICES DETAILED**

**Performance.** The TPA Electricity Aggregator shall:

1. Work with the ODRC to gather historical usage data.
2. Provide the ODRC with its market expertise, information, and recommendations throughout the process to make informed decisions and as requested by the ODRC.
3. Conduct a survey of active and licensed suppliers as certified by the Public Utilities Commission of Ohio and registered in the applicable utilities in order to determine the best market strategies, generate the most competitive bids and maximize savings to the ODRC.
4. Define data requirements, identify sources of data, and create a central data repository of all relevant account information. In addition, provide online access to and export capability for monthly account usage information. Pull utility usage data for all accounts included in the procurement directly from the utility, including all associated costs.
5. Meet with selected ODRC personnel and potential participants to answer questions, discuss various aggregations of the States account, explain the procurement processes, and discuss market conditions.
6. Work with the ODRC to advertise the procurement, contact registered suppliers for the applicable utilities to inform them of the procurement, and register prospective bidders.
7. Upon request, establish a pre-qualification process for potential energy suppliers. Work with the ODRC to develop sound financial and technical qualifications that suppliers must meet in order to bid. These qualifications will include, but are not limited to: viability to meet the standard terms and conditions of the ODRC's contracts, proof of appropriate licenses and transport agreements, adherence to switching rules and enrollment processes, and the ability to meet minimum load requirements for competitive supply.

## SCOPE OF SERVICES DETAILED continued

8. Upon request, create a customized website for each procurement which serve as a centralized site for all parties to access data and review any updates. Post the procurement rules, historical usage data/demand data in downloadable Excel files, rules, contract terms and conditions, and other important data. The TPA's customized Website will be accessible to both the ODRC and qualified suppliers.
9. Assist the ODRC, as requested, to determine the best structure for each bidding event within the procurements and provide recommendations for language changes.
10. Provide information regarding the best time to hold the procurement based on the ODRC's specified timelines and market conditions.
11. Review the final contract to ensure that it meets both the ODRC's and suppliers requirements.
12. Create pricing scenarios and forecast from data provided by the ODRC, other customers, servicing utilities, and market data which may serve as the baseline against which bid prices are compared.
13. Assist the ODRC in assessing pricing decisions that adhere to cost savings goals regarding price risk avoidance, maximized savings, renewable energy, and any additional objectives that the ODRC deems appropriate.
14. Perform all work on a no upfront cost basis. The TPA will be reimbursed by winning suppliers at a rate based upon a per kWh basis over the life of this Contract for all accounts awarded as a result of services provided. Fees paid will be based on the amount of actual kWh used.
15. Receive assistance from the ODRC in providing authorizations to collect account numbers and available historical account data from the servicing utility and/or current competitive suppliers.
16. Upon Request, submit the questions and answers from the bidder's conferences to the ODRC for approval prior to posting.
17. Assist the ODRC in the determination and possible acceptance of the "best offer".
18. Be on notice that if, in the best interest of the ODRC, a supply contract is not executed, the ODRC will be under no obligation to compensate the selected TPA for services rendered.

**Reporting.** The TPA will be required to work with ODRC as follows:

1. Develop the reports that include, but are not limited to measurement of the program including efficiency, effectiveness and adherence. Reporting will be at intervals mutually agreed upon by ODRC and the TPA, and on-demand. The reports will include but are not limited to the Electric Energy Market, historic reports that will show the usage trend for the account and which may be used by each account to document savings and report implemented efficiencies, etc.
2. Verify the accuracy of all account information at the start of this Contract, maintain and verify the accuracy of all account record on an annual basis thereafter.
3. Upon Request, the TPA must personally contact at least one contact person for every account in the Program initially and on an annual basis.
4. Meet in person with the ODRC monitoring Representative on demand and at least quarterly.
5. An updated accounts list must be sent quarterly to the ODRC monitoring Representative identifying new accounts and terminated accounts with cause for termination.
6. All other reports and meeting will be determined by the successful Bidder and the ODRC monitoring Representative

**Authorization.** The TPA Electricity Aggregator will present ODRC with a Letter of Authorization (LOA) form for each electricity account that is eligible for administration/aggregation services. The ODRC shall execute the LOA so long as the ODRC and the TPA Electricity Aggregator are in agreement with the anticipated TPA Electricity Aggregator fees.

## **Part Four Evaluation of Bids**

**TPA – Electricity Aggregator selection.** The authority to provide the services to the ODRC shall be awarded to the lowest responsive and responsible Bidder.

**Evaluation of Bids in General.** The evaluation process may consist of up to three phases:

- Fee: Bid Fee Evaluation;
- Responsiveness: Initial review for defects; and
- Responsibility: Bidder's compliance with minimum qualification/experience level and past performance.

An Evaluation Committee consisting of State subject matter experts has the right to eliminate or add phases if the Committee believes doing so will improve the evaluation process.

### **Rejection of Bids.**

A. The ODRC **may** reject any Bid for one of the following reasons:

Material deviation from the required format and the Bid instructions; or The Bid does not address any other material requirements of the ITB.

B. The ODRC **shall** reject any Bid that does not meet any of the following mandatory requirements:

Bid submitted after the Bid Due Date; or Bid submitted to the wrong address/improperly addressed.

Additionally, the ODRC may cancel this ITB, reject all the Bids, and seek services through a new ITB or other means. If a Bid is not rejected pursuant to the above criteria, then the Evaluation Committee shall review it.

**Clarifications & Corrections.** During the evaluation process, the ODRC ITB Representative or the Evaluation Committee may request clarifications from any Bidder under consideration. Also, the Bidder may be given the opportunity to correct defects in its Bid if the ODRC ITB Representative believes doing so does not result in an unfair advantage for the Bidder and it is in the ODRC's best interests.

**Initial Review.** The ODRC ITB Representative will review the bid from the bidder that submitted the lowest fee for their responsiveness. The ODRC ITB Representative may reject any incomplete or incorrectly formatted Bid, though they may also elect to waive any nonmaterial defects or allow a Bidder to submit a correction or clarification.

## **Part Four Evaluation of Bids (continued)**

**Bidder Qualification Determination.** The Evaluation Committee will review the bidder's compliance with the minimum qualification requirements as stated in Exhibit B, for providing ODRC with the Administration/Aggregate services.

**Bidder's Current Customers/Performance.** The Evaluation Committee may conduct evaluations of each Bidder by contacting current customers of the Bidder as submitted in Exhibit B. This will aid in the determination of whether the Bidder is responsible. The Evaluation Committee may obtain information relevant to the requirements of this ITB that is deemed critical not only to providing services, but also to the working relationship between the ODRC and the TPA Electricity Aggregator.

To maintain quality assurance in this phase of the evaluation process, all information sought by the Evaluation Committee shall be obtained in a manner such that no Bidder is provided an unfair competitive advantage. The Evaluation Committee has the right to determine the number of contacts made by the Evaluation Committee to ensure whether or not the Bidder can meet the minimum requirements of this ITB.

**Interviews and Presentations.** The Evaluation Committee may require Bidders to participate in an interview, or make a presentation about the Bid. Such presentations and interviews provide a Bidder with an opportunity to clarify its Bid and to ensure a mutual understanding of the ITB content. This phase shall be scheduled at the convenience and discretion of the Evaluation Committee. This phase is not an opportunity for any Bidder to engage in any negotiations over the form of the Bid or requirements of this ITB.**Financial Ability.** If the Evaluation Committee is concerned that a Bidder may not be a viable going concern or have sufficient financial backing to perform the Contract, they may insist that a Bidder submit financial statements (i.e. financial statements audited by independent, certified public accountant) for the past three years. This is not an essential element of the initial evaluation phase, but may be requested at any time. If the Evaluation Committee finds that the Bidder's financial ability is not acceptable, they may reject the Bid despite its other merits.

**Miscellaneous.** Any submitted information in response to this Bid including any appropriate descriptions of services and valued added services may become part of the final Contract.

The Evaluation Committee shall document all major evaluation decisions in writing, and make these a part of the Bid file along with the evaluation results for each Bid.

**Notice of Selection.** To ensure communication flow, the ODRC shall send the notice of the decision to select a particular bidder to provide services to each bidder by certified mail (return receipt requested.)

## **Part Five Requirements For Bid Submittals**

**Bid Format.** Each Bid must include sufficient information to allow the evaluation committee to verify all aspects of the ITB in order to ensure all of the Bidder's claims of meeting the ITB's requirements. Each Bid must respond to every request for information in this ITB whether the request requires a simple "yes" or "no" or a detailed explanation. These instructions describe the required format for a responsive Bid. All required specifications must be met for the Bid to be considered responsive.

The Bidder may include any additional information it believes is relevant. All pages, except pre-printed technical inserts, must be sequentially numbered.

Each Bid shall be organized in the following order and shall contain the following information in order to be considered responsive:

Cover Letter and required Exhibits (to be completed or reviewed by the Bidder):

**Cover Letter.** The Bidder must include a business letter signed by an individual authorized to represent the Bidder. The Bidder must be engaged in the business of providing TPA Electricity Aggregator services. The letter must include the following:

- General company profile including a description of the Bidder's legal structure (e.g. corporation, partnership, etc.) and number of employees;
- The address of the Bidder's home office; and
- The name, telephone number, fax number and electronic-mail address of a contact person who has authority to answer questions regarding the Bid and receive notices following Contract award.

**Exhibit A. Proposed Fee.** Be sure to indicate the fee per kWh in the blank provided.

**Exhibit B. Bidder Qualifications and Performance Summary.** This Exhibit consists of a listing of mandatory qualifications and the listing of current customers and shall include a Statement of Compliance. The Bidder shall include a paragraph stating that they are able to comply with all mandatory qualification requirements included in Exhibit B.

**Exhibit C. Workers' Compensation Insurance.** Bidders shall submit proof of Workers' Compensation Insurance labeled as Exhibit C.

## **Part Five Requirements For Bid Submittals (continued)**

**Exhibit D. Conflict of Interest Statement.** Each Bid shall include a statement indicating whether the Bidder, or any people that may provide services through the Bidder, have a possible conflict of interest, direct or indirect, which is incompatible with the provision of services. The ODRC has the right to reject a Bid in which a conflict is disclosed or remove authorization to provide services if any interest is later discovered that could give the appearance of a conflict.

**Exhibit E.** Statements of Compliance with Executive Order 2011-12K and Exhibit F Proposed Contract including Attachment One. **Each Bid shall include a completed Exhibit E.**

**Exhibit F. Proposed Contract** including Attachment One. This document need **NOT** be included in the bid. It shall be considered at part of a Bidder's bid by reference in Statements of Compliance with Executive Order 2011-12K and Exhibit F Proposed Contract including Attachment One. The awarded bidder will sign the final contract to be executed by the parties.

**Exhibit A. Proposed Fee**

**(Complete this Exhibit and submit it with your bid)**

During the term of the contract and any subsequent extension, the maximum fee for all services rendered as the result of the contract shall not exceed:  
\$ \_\_\_\_\_/kWh  
of the electricity commodity consumed by the ODRC eligible accounts. This fee does not apply to kWh lost during the transmission of electricity.

**Exhibit B. Bidder Qualifications and Past Performance**

**(Complete this Exhibit and submit it with your bid)**

Please indicate yes or no in each column.

For Requirements that indicate proof is required, Bidder shall attach the documentation. In the event the documentation IS confidential, please mark each page that is confidential as such. Listings or copies with customer names redacted are appreciated; the ODRC reserves the right to request additional proof in the event the information submitted is insufficient. The proof must be historical(i.e., not created simply for this ITB evaluation).

MANDATORY QUALIFICATION REQUIREMENTS		Yes or No?
#	Description	
1	Bidder has proof that they are PUCO licensed to perform services listed herein as of the bid due date.	
2	Bidder has proof of having had <u>no more than one</u> valid PUCO complaints over the last two years. If one valid complaint exists, provide your experience and the outcome in solving the issue.	
3	Bidder's proposed TPA for ODRC has documented 2 years of experience in demand response with all four Investor Owned Utilities in Ohio.	
4	Bidder's proposed TPA has documented 2 years of experience in demand response with all four Investor Owned Utilities (IOU) in Ohio.	
5	Bidder has proof of experience with a customer(s) in the geographic region and volume profile similar to ODRC. (One or more customer required.)	
6	Bidder has proof of many analytical tools and reports including savings and any detailed additional charges.	
7	Bidder has proof of past or current broker agreements with a robust amount of active qualified suppliers all over Ohio.	
8	Bidder has proof of being up to date with all Investor Owned Utility (IOU) cases.	
9	Bidder has proof of a quality control and risk management plan with a customer similar to ODRC in the geographic region and volume.	

**Exhibit B. Bidder Qualifications and Past Performance continued**

**(Complete this Exhibit and submit it with your bid)**

The Bidder must provide the following information for this section for the past five years, unless otherwise specified. Complete this form by indicating “yes” or “no” in each column.

If the answer to any item is “yes”, the Bidder must provide complete background details about the matter. While an affirmative answer to any of these items will not automatically disqualify a Bidder from consideration, at the sole discretion of the Evaluation Committee, such an answer and a review of the background details may result in a rejection of the Bid. The Evaluation Committee will make this decision based on its determination of the seriousness of the matter, the matter’s possible impact on the Bidder’s performance on the Project, and the best interests of the ODRC.

See also next page

PAST PERFORMANCE		
Item	Description	Yes or No?
A	The Bidder has had a Contract terminated for default or cause. If so, the Bidder must submit full details, including the other party's name, address, and telephone number.	
B	The Bidder has been assessed any penalties in excess of five thousand dollars (\$5,000), including liquidated damages, under any of its existing or past Contracts with any organization (including any governmental entity). If so, the Bidder must provide complete details, including the name of the other organization, the reason for the penalty, and the penalty amount for each incident.	
C	The Bidder was the subject of any governmental action limiting the right of the Bidder to do business with that entity or any other governmental entity.	
D	Trading in the stock of the company has been suspended. If so, the Bidder must submit full details including the date(s) and explanation(s).	
E	The Bidder, any officer of the Bidder, or any owner of a twenty percent interest or greater in the Bidder has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.	
F	The Bidder, any officer of the Bidder, or any owner with a twenty percent interest or greater in the Bidder has been convicted of a felony or is currently under indictment on any felony charge.	

**Exhibit B. Bidder Qualifications and Past Performance**

For all current customers for whom the Bidder provides TPA Electricity Aggregator and Related Services, the Bidder shall attach a list of current customers and a contact name and telephone number for each contact person. Submit the said list with your bid. By providing this information, Bidder agrees to allow the ODRC Evaluation Team or their designees the right to contact these customers to ask questions regarding Bidder's performance on existing engagements.

**Exhibit C     Proof of Worker's Compensation Insurance**

Attach current Worker's Compensation certificate and label it as Exhibit C and return it with your bid.

**Exhibit D Conflict of Interest**

**(Complete this Exhibit and submit it with your bid)**

Provide statement regarding any potential Conflict of Interest:

Elections Declaration

(Name of Vendor)\_\_\_\_\_ affirms that, as applicable to the vendor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or the Governor's campaign committee.

Ohio Ethics and Conflict of Interest Laws

In accordance with Executive Order 2007-01S, Vendor or Grantee, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S; (2) it has reviewed and understands the Ohio ethics and conflict of interest laws; and, (3) will take no action inconsistent with those laws and this order. The Vendor or Grantee understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of any contract or grant resulting from this bid, and may result in the loss of other contracts or grants with the State of Ohio.

I attest that I am a representative of the organization listed in this proposal and have the authority to bind the Bidder to the aforementioned requirement.

Organization\_\_\_\_\_

Printed Name and Title \_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

**Exhibit E    Statements of Compliance with Executive Order 2011-12K  
and Exhibit F Proposed Contract including Attachment One**

(Complete this Exhibit and include it with your bid)

Exhibit F Proposed Contract including Attachment One

\_\_\_\_\_, Bidder, acknowledges to having read, understood, and agrees to the Purchase Contract as set forth in Exhibit F. Bidder is able to contractually comply with all the terms and conditions set forth in the Purchase Contract. If there are any such terms and conditions which Bidder is unable to contractually comply, the Bidder must provide a detailed statement as to the reason(s) such term and or condition cannot be met.

**AFFIRMATION AND DISCLOSURE:**

By the signature affixed to this bid, the Bidder affirms, understands and will abide by the requirements of Executive Order 2011-12K issued by Ohio Governor John R. Kasich. If selected, the Bidder affirms that both they and any of their subcontractors shall perform no services requested under this Contract outside of the United States. The Executive Order is available at the following website:

<http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>

The Bidder 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 bid will deem the Bidder not responsive and no further consideration will be given to the bid. Bidder offering will not be considered. If the Bidder will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

Principal location of business of Bidder:

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

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

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

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

Location where services will be performed by TPA:

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

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

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

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

**Exhibit F. Proposed Contract including Attachment One**

FOR OFFICE USE ONLY:

Contract No.	Fund	ALI
	SMPL	SMPL
Dept.	Program	OAKS Vendor ID No.
SMPL	SMPL	XXXXXX

**Purchase  
Contract  
Between the  
Ohio Department of Rehabilitation and Correction  
SMPL**

---

**And  
SMPL**

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**THIS CONTRACT** is made and entered into effective 1st day of January, 2000 by and between the Ohio Department of Rehabilitation and Correction, SMPL (hereinafter collectively referred to as "Agency"), located at SAMPLE ADDRESS and SMPL (hereinafter referred to as "Contractor"), located at SAMPLE ADDRESS (hereinafter referred to as "Contract").

**WHEREAS**, Agency desires to engage Contractor to SAMPLE DESCRIPTION

**WHEREAS**, pursuant to Section 5120.09 of the Ohio Revised Code, Agency may enter into agreements with contractors to effectuate the purposes for which Agency was created:

**WHEREAS**, Contractor desires to provide such services and/or such goods in accordance with the terms and conditions prescribed by Agency; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

**ARTICLE 1: NATURE OF CONTRACT**

**1.1** Contractor shall be employed as an independent contractor, to fulfill the terms of this Contract. It is specifically understood that the nature of the services and/or goods to be rendered under this Contract are of such a personal nature that Agency is the sole judge of the adequacy of such services and/or goods. Agency thus reserves the right to cancel this Contract should Agency at any time be dissatisfied with Contractor's performance of its duties under this Contract.

## Exhibit F. Proposed Contract including Attachment One

- 1.2 Agency enters into this Contract in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.
- 1.3 Contractor shall provide services and/or goods and Agency shall not hire, supervise, or pay any assistants to Contractor in its performance under this Contract. Agency shall not be required to provide any training to Contractor to enable it to provide services and/or goods required hereunder.
- 1.4 In the event of a cancellation by Agency, Contractor shall be reimbursed in accordance with Article 6, Termination of Contractor's Services and/or Goods. All provisions of this Contract relating to "confidentiality" shall remain binding upon Contractor in the event of cancellation.
- 1.5 Agency may, from time to time, 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 Agency's satisfaction. 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 is performed, remains with the Contractor. Agency retains the right to ensure that Contractor's work is in conformity with the terms and conditions of this Contract. It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of Agency or the State of Ohio.

### **ARTICLE 2: SCOPE OF SERVICES AND/OR GOODS**

- 2.1 If the purchase was not solicited, the Contractor shall provide the following scope of services and/or goods:  
N/A

(If additional space is needed, then attach an additional page headed "Continuation of 2.1" which is attached hereto and incorporated herein.)

**Exhibit F. Proposed Contract including Attachment One**

If solicited, the solicitation (number XXXXXXXXSAMPLE ) documents, which describe the goods and/or services to be provided and the payment terms which are attached hereto and incorporated herein.

- 2.2 The Contractor’s Agency contact person for this Contract is SAMPLE CONTACT who is responsible for overseeing compliance of the terms and conditions of this Contract and must verify and account for expenditures of state funds resulting from Contractor’s provision of services and/or goods.
- 2.3 Contractor shall not discuss or disclose with any non-party any information or material obtained pursuant to its obligations under this Contract without the prior written consent of Agency.
- 2.4 Due to institutional security requirements, available hours to provide services and/or goods may be limited by inmate availability. In that event, the Contractor and Agency will negotiate a mutually agreeable schedule to provide services and/or goods.

**ARTICLE 3: TIME OF PERFORMANCE**

- 3.1 This Contract shall remain in effect until the work described in Article 2, Scope of Services and/or Goods, is completed to the satisfaction of Agency and until Contractor is paid in accordance with Article 4, Compensation, or until terminated as provided in Article 6, Termination of Contractor’s Services and/or Goods, whichever is sooner.
- 3.2 As the current General Assembly cannot commit a future General Assembly to expenditure, this Contract shall expire on   
 Prior to expiration of the original term or any renewed term, Agency may renew this Contract on the same terms and conditions by giving notice as set forth in Article 18 of this Contract. Such renewal shall begin upon the expiration of the original term or any renewed term, as applicable, and expire as set forth in an Amendment to this Contract.
- 3.3 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Contract would be contrary to the terms of Ohio Revised Code (“O.R.C.”) Section 3517.13 (campaign contribution), O.R.C. Section 127.16 (controlling board), or O.R.C. Chapter 102 (public officers – ethics).

**ARTICLE 4: COMPENSATION**

- 4.1 Agency shall pay Contractor for services and/or goods rendered a total amount of \$
- 4.2 The total amount due was computed according to the following payment schedule:  
See Attached Solicitation Documents.

## **Exhibit F. Proposed Contract including Attachment One**

- 4.3 Contractor shall submit an invoice for the compensation incurred consistent with Section 4.2 above, and each invoice shall contain a description of the services and/or goods provided and total amount due. Upon receipt and approval of the invoice by Agency, a voucher for payment shall be processed.
- 4.4 Invoice Requirements. The Contractor must submit an original invoice with three (3) copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
- The purchase order number authorizing the delivery of goods or services. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the goods and services. If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.
- 4.5 Payment Due Date. Payments under this Contract will be due on the 30th calendar day after the later of the date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.
- 4.6.2 The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with Ohio Revised Code Section 126.30.
- 4.7 Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval and in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code. It is understood that Section (G) of Rule 126-1-02 does not apply.

### **ARTICLE 5: CERTIFICATION OF FUNDS**

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Contract shall be binding on either party until all relevant statutory provisions of the O.R.C., including, but not limited to, O.R.C. Section 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that Agency gives Contractor written notice that such funds have been made available to Agency by Agency's funding source.

### **ARTICLE 6: TERMINATION OF CONTRACTOR'S SERVICES AND/OR GOODS**

- 6.1 Agency may, at any time prior to the completion of services and/or delivery of all goods by Contractor under this Contract suspend or terminate this Contract with or without cause by giving written notice to Contractor.
- 6.2 Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by Agency, 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, conclusions resulting therefrom, and any other matters Agency requires.

## **Exhibit F. Proposed Contract including Attachment One**

- 6.3 Contractor shall be paid for services and/or goods provided up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services and/or goods provided and hours worked. In the event of suspension or termination, any payments made by Agency for which Contractor has not provided services and/or goods shall be refunded.
- 6.4 In the event this Contract is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Agency all work products and documents which have been prepared by Contractor in the course of providing services and/or goods under this Contract. All such materials shall become and remain the properties of Agency, to be used in such manner and for such purpose as Agency may choose.
- 6.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against Agency by reason of such suspension or termination.
- 6.6 Contractor may terminate this Contract upon 90 days prior written notice to Agency.
- 6.7 The Contractor and Agency may terminate this Contract upon mutual written agreement, within a mutually agreeable time period.
- 6.8 A Contractor who breaches this Contract or fails to perform on this Contract may be precluded from being awarded any subsequent contract for the same or similar services and/or goods for up to two (2) years after the termination of this Contract, for cause, by Agency.

### **ARTICLE 7: RELATIONSHIP OF PARTIES**

- 7.1 Agency and Contractor agree that, during the term of this Contract, Contractor shall be engaged by Agency solely on an independent contractor basis, and Contractor shall therefore be responsible for all Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.
- 7.2 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances in the conduct of the work hereunder.
- 7.3 While Contractor shall be required to provide services and/or goods described hereunder for Agency during the term of this Contract, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder on an independent contractor basis, that Agency shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's provision of services and/or goods hereunder.
- 7.4 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

## **Exhibit F. Proposed Contract including Attachment One**

- 7.5 License number SAMPLE LICENSE OR N/A. The Contractor will maintain any professional licensing required to fulfill the Contract.
- 7.6 The Contractor recognizes the security requirements for entering Agency's facilities and acknowledges receipt of the "Standards of Conduct for Contractor" (DRC 4376). The Contractor agrees to comply with these standards and with safety rules and procedures. Due to institutional security requirements, the Agency staff may require the Contractor to document when the Contractor or any subcontractor is on state property.
- 7.7 The Contractor understands and agrees that Agency expressly reserves the right to conduct a background investigation on the Contractor, subcontractor, assistants and any employee required to provide services and or goods. An unacceptable background history may, at Agency's discretion, be grounds to terminate the Contract or reject any unacceptable subcontractors or other individuals providing services and/or goods under the Contract.
- 7.8 Any misrepresentation or omission of a material fact concerning the Contractor's qualifications and fitness to provide services and/or goods under this Contract may be grounds for termination, as may be determined within the discretion of the Agency.

### **ARTICLE 8: RECORD KEEPING**

During performance of this Contract and for a period of three years after its completion, Contractor shall maintain auditable records of all charges pertaining to this Contract and shall make such records available to Agency as Agency may reasonably require.

### **ARTICLE 9: RELATED AGREEMENTS**

- 9.1 The work contemplated in this Contract is to be performed by Contractor, who may subcontract without Agency's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services and/or goods described in Article 2, Scope of Services and/or Goods, but which are required for its satisfactory completion. Contractor shall not enter into other subcontracts without prior written approval by Agency. All work subcontracted shall be at Contractor's expense.
- 9.2 Contractor shall bind its subcontractors to the terms of this Contract, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind Agency to terms inconsistent with, or at variance from, this Contract.
- 9.3 Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of Agency, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.
- 9.4 Contractor shall furnish to Agency a list of all subcontractors, their addresses, their principal location of business, tax identification numbers, and the dollar amount of each subcontract.

## **Exhibit F. Proposed Contract including Attachment One**

### **ARTICLE 10: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE**

- 10.1 No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Contract is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Contract or carrying out of any such work, 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 said work.
- 10.2 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 Agency in writing. Thereafter, he or she shall not participate in any action affecting the work under this Contract, unless Agency shall determine in its sole discretion 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.
- 10.3 All contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Section 102.01 to 102.09. Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

### **ARTICLE 11: NONDISCRIMINATION OF EMPLOYMENT**

- 11.1 Pursuant to O.R.C. Section 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, age, national origin, or disability against any citizen of this state in the employment of any person qualified and available to perform the work under this Contract.
- 11.2 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 work under this Contract on account of race, color, religion, sex, age, national origin, or disability.
- 11.3 The O.R.C. section 125.111, requires any Contractor doing business with the state of Ohio to maintain a written affirmative action program addressing employment practices. The law further requires that this plan be filed annually with the Department of Administrative Services, Equal Employment Opportunity Division.

## **Exhibit F. Proposed Contract including Attachment One**

- 11.4 Contractor and any subcontractor shall not engage in discriminatory employment practices. Contractor certifies that it and any subcontractor will comply with all applicable federal and state laws, as well as rules and regulations governing fair labor and employment practices. Contractor and any subcontractor are encouraged to purchase goods and services from certified Minority Business Enterprise and Encouraging Diversity, Growth and Equity vendors.

### **ARTICLE 12: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

- 12.1 Agency shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Contractor pursuant to this Contract. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by Agency shall be subject to copyright by Contractor in the United States or any other country.
- 12.2 Contractor agrees that all deliverables hereunder shall be made freely available to the general public to the extent permitted or required by law.

### **ARTICLE 13: LIABILITY**

- 13.1 Contractor agrees to indemnify and to hold Agency and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Contract which are attributable to Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Contract. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.
- 13.2 Contractor shall bear all costs associated with defending Agency and the state of Ohio against any claims.
- 13.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
- 13.4 Contractor agrees, at its own cost, to procure and continue in force at all times during the term of the Contract, general liability insurance with a \$2,000,000 annual aggregate and a \$1,000,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside of the policy limits. Such policy shall designate the State of Ohio and the Ohio Department of Rehabilitation and Correction as an Additional Insured. The policy shall also be endorsed to include a waiver of subrogation and provide the state with thirty (30) day written notice of cancellation or expiration or material change. It is agreed that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form.

## **Exhibit F. Proposed Contract including Attachment One**

The state reserves the right to approve all policy deductibles, levels of self-insured retention, captive insurance programs and may require the Contractor to have their policy (s) endorsed to reflect per project/per location general aggregate limits. Such insurance shall be written by a company authorized to conduct such business in the State of Ohio, with at least an A-"Excellent" rating from A.M. best Company.

The requirement to procure general liability insurance may be reduced/waived/self-insured with the prior written consent of the Agency's Division of Legal Services since certain contractors have potentially less or no exposure in liability depending on the nature of their work under the Contract.

- 13.5 Contractor agrees, at its own cost, to maintain workers' compensation as required by Ohio law and in compliance with the Ohio Bureau of Workers' Compensation.

### **ARTICLE 14: COMPLIANCE WITH LAWS**

Contractor, in the execution of duties and obligations under this Contract, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

### **ARTICLE 15: DRUG FREE WORKPLACE**

Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

### **ARTICLE 16: CAMPAIGN CONTRIBUTIONS**

Contractor hereby certifies that all applicable parties listed in Division (I) (3) or (J) (3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) (1) and (J) (1) of O.R.C. Section 3517.13.

### **ARTICLE 17: ENTIRE AGREEMENT/WAIVER**

- 17.1 This Contract contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
- 17.2 This Contract supersedes any and all previous agreements, whether written or oral, between the parties.
- 17.3 A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

### **ARTICLE 18: NOTICES**

All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.

## **Exhibit F. Proposed Contract including Attachment One**

### **ARTICLE 19: HEADINGS**

The headings in this Contract have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Contract.

### **ARTICLE 20: SEVERABILITY**

The provisions of this Contract are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

### **ARTICLE 21: CONTROLLING LAW**

This Contract and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder.

### **ARTICLE 22: ASSIGNMENT / DELEGATION**

The Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

### **ARTICLE 23: FINDINGS FOR RECOVERY**

Contractor warrants that it is not subject to an “unresolved” finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.

### **ARTICLE 24: DEBARMENT**

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 O. R.C. Section 153.02 or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Contract.

### **ARTICLE 25: FORCE MAJEURE**

If the Agency or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term “force majeure” means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

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## **Exhibit F. Proposed Contract including Attachment One**

### **ARTICLE 26: "SWEATSHOP-FREE" PURCHASING**

Contractor certifies that all facilities used for the production of the goods or performances of services under this Contract are not sweatshops and are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all manufacturers, suppliers and/or subcontractors used by the Contractor in furnishing these goods or services.

If DAS receives a complaint alleging non-compliance with this "sweatshop-free" certification, DAS may enlist the services of an independent monitor to investigate allegations of such non-compliance on the part of the Contractor, any sub-contractors or suppliers used by the Contractor in performance of the Contract. If allegations are proven to be accurate, the Contractor will be advised by DAS of the next course of action to resolve the complaint and the Contractor will be responsible for any costs associated with the investigation. Consequences for violating this certification may include, but are not limited to, cancellation of the contract, a finding by the Agency that the Contractor is not a responsible bidder or a determination that the Contractor is ineligible to receive future contract bid awards. Items that will be considered in an investigation include, but are not limited to standards for wages, occupational safety and work hours.

### **ARTICLE 27: EXECUTIVE ORDER REQUIREMENTS**

The Contractor affirms to have 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 Executive Order is provided as an attachment to this contract.

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.

### **ARTICLE 28: TERMINATION, SANCTION, DAMAGES**

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 25% of the value of the Contract.

## Exhibit F. Proposed Contract including Attachment One

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.

### ARTICLE 29: EXECUTION

This Contract is not binding upon Agency unless executed in full.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed by their duly authorized officers, as of the day and year first written above.

Signature of Contractor:	
Printed Name of Contractor:	Date of Signing:

ATTESTATION: I hereby attest that there are sufficient funds available to cover the cost of this Contract:	
Fiscal Officer:	Date:
Warden/Program Manager/Department Head:	Date:

For **purchases of services only**, the following signatures are also required:

Program Administrator:	Date:
Legal Services:	Date:
Deputy Director, Administration:	Date:
Director, Ohio Department of Rehabilitation and Correction:	Date:

## **Exhibit F. Proposed Contract including Attachment One**

### **Attachment 1 Modifications to the Proposed Contract pages 1-12**

#### **ADDITION TO ARTICLE 3: TIME OF PERFORMANCE**

- 3.2.1 This Contract shall become effective when all signatures are affixed (hereafter referred to as "Effective Date") and remain in full force and effect until the end of the current biennium 6/30/2015.
- 3.2.2 This Contract shall be eligible for renewal for an additional period of two years and thereafter for two years, unless terminated by either party by giving ninety (90) days notice in writing to the other party of its intention to do so, or 7 days notice in the event a fee change negotiation fails, in the sole opinion of the ODRC. See also ARTICLE 6 TERMINATION OF CONTRACTOR'S SERVICES AND/OR GOODS.

#### **DELETION TO ARTICLE 4: COMPENSATION**

Section 4. deleted entirely and replaced as indicated below

#### **REPLACEMENT FOR ARTICLE 4: COMPENSATION**

- 4.1 During the term of the Contract and any subsequent extension, the maximum fee for all services rendered as the result of this Contract shall not exceed: \$\_\_\_\_\_, per kWh of the Electricity Commodity consumed by the ODRC eligible accounts. This fee does not apply to kWh lost during the transmission of electricity. This fee shall be paid to the TPA by the Electricity Supplier and borne by the ODRC in our payments for Electricity Service. In the event of a demonstrated market change, the ODRC, with 7 days written notice, may request a fee reduction negotiation. If, in the sole opinion of the ODRC, the negotiations have failed, the ODRC may terminate the Contract not less than 7 days after negotiations are deemed "failed."
- 4.2 The TPA Electricity Aggregator shall have the utility provide evidence to confirm the fee portion of their electricity pricing to the ODRC Representative.
- 4.3 The TPA Electricity Aggregator agrees to pay all federal, state and local taxes which may be assessed in connection with providing services to ODRC.

#### **DELETION TO ARTICLE 6: TERMINATION OF CONTRACTOR'S SERVICES AND/OR GOODS.**

- 6.1 deleted entirely and replaced as indicated below  
6.6 deleted entirely and replaced as indicated below  
6.7 deleted entirely and replaced as indicated below

#### **REPLACEMENTS/ADDITIONS TO ARTICLE 6: TERMINATION OF CONTRACTOR'S SERVICES AND/OR GOODS.**

- 6.1 If either party fails to meet or fulfill the terms and provisions of this Contract, the party claiming such failure may, at its option, give written notice of the breach claimed to the other party. If, within thirty days from receipt of such notice, such failure has not been corrected or arrangements made for settlement, the claiming party may then terminate this Contract for cause ninety days (90) after giving written notice of termination to the breaching party.
- 6.6 Either party may terminate this Contract at any time and for a valid reason by providing the other party a written notice ninety (90) days prior to the date of termination.
- 6.7 If either party is prevented from performing under this Contract because of fire, civil disturbances, the public enemy, acts of God, other casualties, labor disputes or other disturbances beyond the control of either of the parties, the disruption shall not be considered a default of the terms of this Contract. The effective term of this Contract may be extended for a period equal to the periods of suspended performance in order to provide the number of operating days, based on the terms of this Contract. The party wishing to exercise this option must notify the other party in writing at least ninety (90) days prior to the date that this Contract or an extension of it would normally terminate.
- 6.9 In the event of a demonstrated market change, the ODRC, with 7 days written notice, may request a fee reduction negotiation. If, in the sole opinion of the ODRC, the negotiations have failed, the ODRC may terminate the Contract not less than 7 days after negotiations are deemed "failed."

#### **DELETIONS TO ARTICLE 7: RELATIONSHIP OF PARTIES**

- 7.6 deleted entirely as not applicable

**Exhibit F. Proposed Contract including Attachment One**

**ADDITIONS TO ARTICLE 8: RECORDS**

TPA Electricity Aggregator shall, upon reasonable notice, give the authorized representative of the ODRC the privilege of inspecting, examining, copying and auditing such business records during normal business hours, at TPA Electricity Aggregator’s headquarters in the State of Ohio. The TPA Electricity Aggregator will freely lend its own assistance in making such inspections, examinations and audits.

**DELETIONS TO ARTICLE 13: LIABILITY**

13.4 deleted entirely as not applicable

**ADDITIONS TO ARTICLE 18: NOTICES**

For any notice under this Contract to be effective, it must be made in writing and sent by hand, certified or registered mail to the mailing address of the appropriate representative as provided below unless the ODRC or the TPA Electricity Aggregator has notified the other party, in accordance with the provisions of this section, of a new mailing address.

For the Third Party Administrator:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone & Address \_\_\_\_\_  
\_\_\_\_\_

For the ODRC:

Name: Mr. Gary Mohr, Director of ODRC  
c/o Jenny Hildebrand, Energy Conservation and  
Sustainability Administrator; 614-752-1072  
770 West Broad St, Columbus, OH 43222

The TPA Account Aggregator. The person that will be performing the TPA Account work during the term of this Contract is:

\_\_\_\_\_

**End of Proposed Contract with Attachment 1**