

Request for Proposal

RFP Number: OCC22083r-2
Date Issued: January 12, 2022



Issued by
Office of the Ohio Consumers' Counsel (OCC)
65 E. State St., 7th Fl.
Columbus, Ohio 43215
www.occ.ohio.gov

The OCC is requesting Proposals for:

Duke Energy Ohio, Inc.
Utility Revenue Requirements (Rate Base & Operating Income) Expert

PUCO Case No.: 21-887-EL-AIR et. al.

RFP Issued: January 12, 2022
Inquiry Period Begins: January 12, 2022
Inquiry Period Ends: January 17, 2022 - 8:00 AM EST
Proposal Due Date: January 19, 2022 - 2:00 PM EST

**REQUEST FOR PROPOSAL
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PART ONE: EXECUTIVE SUMMARY

Introduction. This is a Request for Proposals (RFP) under Section 125.071 of the Ohio Revised Code (ORC) and Section 123:5-1-08 of the Ohio Administrative Code (OAC). The Ohio Consumers' Counsel (OCC) is soliciting competitive sealed proposals (Proposals) for **Utility Revenue Requirements (Rate Base & Operating Income) Expert**. If a suitable offer is made in response to this RFP, the OCC may enter into a contract (Contract) to have the selected Offeror (the Contractor) perform all or part of the Project. This RFP provides details on what is required to submit a Proposal, how OCC will evaluate the Proposals, and what will be required of the Contractor in performing the work.

Background. The OCC plays an integral part in Ohio's government and economy by fulfilling its role as the advocate agency for residential utility consumers. Established in 1976, the OCC's services for Ohio consumers include advocacy on their behalf on issues involving the affordability and quality of their utility services. OCC also provides education for consumers regarding their utility services.

The law governing the agency's activities is contained in Chapter 4911 of the Ohio Revised Code.

Purpose. This RFP issued by the Office of the Ohio Consumers' Counsel ("OCC") to solicit proposals from Independent Contractors for technical assistance to determine the appropriate revenue requirement, specifically rate base and operating income, Duke Energy Ohio, Inc. ("Duke" or "Utility") rate case (Case No. 21-887-EL-AIR et al.).

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PART TWO: GENERAL INSTRUCTIONS

Calendar of Events. The schedule for this RFP and the work to be addressed is given below. The OCC reserves the right to change this schedule as needed.

Firm Dates.

RFP Issued:	January 12, 2022
Inquiry Period Begins:	January 12, 2022
Inquiry Period Ends:	January 17, 2022 - 8:00 AM EST
Proposal Due Date:	January 19, 2022 - 2:00 PM EST
Contract Award Date:	January 26, 2022
Contract End Date:	June 30, 2022
Estimated Budget:	\$45,000.00

Failure to meet a deadline in the submission or evaluation phases or any objection to the dates for the performance in the Proposal phase may result in the OCC not considering the Proposal from the Offeror.

Contract Period. The term of this contract will be from the award date through **June 30, 2022**. At the sole discretion of the OCC, the State may renew all or part of this Contract with an optional one-year renewal which may extend this contract through **June 30, 2023**.

If a Contractor doing business with OCC has accumulative contracts or anticipated expenditures during the current state fiscal year totaling \$50,000 or more, OCC is required to seek approval from the State of Ohio Controlling Board for expenditure of funds. Prior to awarding a Contract, the OCC will decide whether or not it will proceed with the contract and seek approval from the Board. The timing of that approval is dependent on the dates for submission to the Board and the scheduled meeting of the Board.

Contact. The following individual will represent the OCC as the primary contact for matters relating to this RFP and any subsequent contract.

Lisa Lyman
Contract and Fiscal Administrator
Office of the Ohio Consumers' Counsel
65 E. State St., 7th Fl.
Columbus, Ohio 43215-3485
E-mail: lisa.lyman@occ.ohio.gov

RFP Inquiries. Offerors may make inquiries or seek clarifications regarding this RFP any time during the inquiry period listed in the RFP Timeframe Requirements. To make an inquiry, Offerors must use the following process:

1. Access the Department of Administrative Services (DAS), State Procurement web site at <http://procure.ohio.gov/proc/searchProcOpps.asp>;
2. Under "Procurement Opportunity Search – General Criteria", enter OCC then the Document/Bid Number as identified on the cover page of this RFP (OCC22083r-2), OR under "Agency" use the dropdown arrow and select Consumers' Counsel, Office of the Ohio;
3. Click the "Search" button;
4. Click on the "Document/Bid Number" hyperlink;
5. Click on "Submit Inquiry";
6. On the document inquiry page, complete the required "Personal Information" section by providing:
 - a. First and last name of the prospective Offeror's representative who is responsible for the inquiry.
 - b. Name of the prospective Offeror.
 - c. Representative's business phone number.
 - d. Representative's e-mail address.
7. Type the inquiry in the space provided including:
 - a. A reference to the relevant part of this RFP.
 - b. The heading for the provision under question.
 - c. The page number of the RFP where the provision can be found.
8. Enter the Confirmation Number at the bottom of the page.
9. Click the "Submit" button.

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

Offerors may view inquiries and responses using the following process:

1. Access the State Procurement Web site at <http://www.ohio.gov/procure>.
2. From the "Quick Links menu on the right, select "Bid Opportunities Search".
3. In the "Document/Bid Number" field, enter the RFP number found on the first page of this RFP.
4. Click the "Search" button.
5. On the document information page, click the "View Q & A" button to display all inquiries with responses submitted to date.

OCC will try to respond to all inquiries within 48 hours of receipt, excluding weekends and State holidays.

Proposal Submission. Proposals can be sent e-mailed to occ-bids@occ.ohio.gov.

Electronic Submission: Offeror must submit one (1) original Proposal which includes all completed and signed forms. Email subject line must clearly be identified as the following:

**“RFP-OCC22083r-2 Duke Energy Ohio, Inc
Utility Revenue Requirements (Rate Base & Operating Income) Expert”**

The OCC may reject any proposals or unsolicited proposal amendments that are received after the deadline. When mailing Proposals, Offeror must allow for adequate mailing time to ensure its timely receipt.

Each Offeror must carefully review the requirements of this RFP and the contents of its proposal. OCC will not be liable for any costs incurred by any Offeror in responding to this RFP, regardless of whether the OCC awards the contract through this process, cancels this RFP for any reason, or by issuing another RFP.

By submitting a Proposal, the Offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements.

In addition, the Offeror will agree to abide by all laws, rules and directives of the State of Ohio, as they pertain to vendors doing business with the State of Ohio.

The OCC may reject a Proposal if the Offeror takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or if the Proposal fails to meet any requirement of this RFP. The OCC may reject any Proposal that is not in the best interest of the OCC.

All Proposals and other material submitted will become the property of the OCC. Proprietary information should not be included in a Proposal or supporting materials because all Proposals will be treated as a public record and the OCC will have the right to use any materials or ideas submitted in any Proposal without compensation to the prospective Offeror.

Waiver of Defects. The OCC has the right to waive any defects in any Proposal or in the submission process followed by the Offeror. However, the OCC will only do so if it is in the best interest of the OCC and will not cause any material unfairness to other Offerors.

Amendments to Proposal. Amendments or withdrawals of proposals will be allowed if the amendment or withdrawal is received before the proposal due date. No amendment or withdrawals will be permitted after the due date, except as expressly authorized by the OCC.

Amendments to the RFP. If the OCC decides to revise this RFP, amendments will be posted on the DAS website. Offeror's are responsible for checking the website for any updates or to review all questions and answers posted regarding this RFP.

PART THREE: SCOPE OF WORK AND DELIVERABLES

This section describes the scope of work and what the selected Offeror must deliver as part of the completed work (the “Deliverables”) to meet the terms and conditions of a subsequent contract.

Scope of Work. The Independent Contractor will be fully responsible for the review, analysis and evaluation of all materials filed by the Utility and any other parties in the proceeding relating to the determination of the appropriate revenue requirement, specifically rate base, operating income and the overall revenue requirement (excluding rate of return) in Case No. 21-887-EL-AIR, et al.

The Independent Contractor will also be responsible for the analysis and evaluation of revenue requirement background materials as may be provided by OCC, or identified by the Independent Contractor during the course of its review. The Independent Contractor will be expected to bring to its analysis substantial experience in evaluating all issues related to revenue requirement for the Utility.

Summary. On October 01, 2021, Duke filed an application for an increase in its rates in Case No. 21-887-EL-AIR, et al. and filed its supporting direct testimony on October 15, 2021.

Duke’s last rate case was decided by the PUCO in December 2018 in Case No. 17-32-EL-AIR, et al. In that case, the PUCO approved a stipulation that reduced Duke’s distribution revenue by \$19.177 million, with an authorized rate of return of 7.54%

Work Requirements and Deliverables. The Independent Contractor shall undertake the following work and activities, as requested and approved by OCC, for the identification, analysis and development of issues related to the revenue requirement proposed by the Utility, the PUCO and other parties and the recommendation of appropriate rate base, operating income and revenue requirement for the Utility in the proceeding.

Deliverable 1

- A. Review and prepare an analysis and critique of the Utility’s proposed revenue requirement including a review of the Utility’s Application, work papers and supporting testimonies.
- B. Provide technical support on revenue requirements for the discovery process in the proceeding, including:
 - a. Prepare discovery (interrogatories and requests for production of documents);
 - b. Review responses to OCC’s discovery;
 - c. Attend depositions scheduled as required by OCC’s Lead Attorney;
 - d. As required, give deposition testimony; and
 - e. Review discovery requests served upon the OCC by other parties and assistance in preparing OCC’s responses to such discovery.

Deliverable 2

Review and prepare an analysis and critique of the PUCO Staff’s proposed revenue requirement in its Staff Report of Investigation, work papers and supporting testimony, including preparation of objections to the Staff Report on the same or related issues. It is estimated that objections to the Staff Report will be issued approximately five months after the Utility files its application. Objections to the Staff Report, along with testimony, are due thirty days from the date the Staff Report is issued.

Deliverable 3

- A. Recommend and calculate an appropriate revenue requirement for the Utility:
 - 1. Prepare written, direct and, if needed, rebuttal testimony and presentation of that testimony at the hearing;
 - 2. Testimony shall include the appropriate rate base, operating income, revenue requirement and supporting schedules.
- B. Review the information developed by, and the testimony of, any other consultants retained by OCC in order to coordinate the OCC's development of issues in this proceeding.

Deliverable 4

- A. Provide technical support, as identified by OCC's Lead Attorney, for the legal preparation involved in the proceeding including an analysis of written and oral testimony of other witnesses (Utility, PUCO Staff and other parties) to assist with cross-examination.
- B. Provide technical assistance needed for any pre-hearing or settlement conferences.
- C. Provide technical assistance on the revenue requirement subsequent to the hearing in order to prepare post-hearing briefs and evaluate issues for possible rehearing and/or appeals including, but not limited to, evaluation of those and related issues in the PUCO's Opinion and Orders and, if requested, by OCC's Lead Attorney.

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PART FOUR: PROPOSAL REQUIREMENTS

Proposal Format. Each proposal must include sufficient data to allow the OCC to verify the total cost for the work and all of the Offeror's claims of meeting the RFP's requirements. These instructions describe the required format for a responsive proposal. The Offeror may include any additional information it believes is relevant.

1. **Offeror Profile.** Each proposal must include a general profile of the prospective Offeror's relevant experience working on projects similar to this work. In the **Offeror's Profile Summary**, (See *Attachment One*), details on prior and current similar and/or relevant work projects should be provided, including the scope of such work and clients. While detail is generally preferred on an Offeror's most recent work, Offeror's are encouraged to provide detail on relevant work in Ohio.

The profile must also include the Offeror's legal name, address, and telephone number; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); total number of employees nationwide and in Ohio; the percentage of women employees nationwide and in Ohio; the percentage of minorities nationwide and in Ohio; number of employees to be engaged in tasks directly related to the work; and any other background information the prospective Offeror's believes would be useful during the proposal evaluation process.

2. **Work Plan.** The prospective Offeror must fully describe its approach, methods, and specific work steps for doing the work and producing the **Work Requirements and Deliverables** set forth in Part Three of this RFP. The OCC encourages responses that demonstrate a thorough understanding of the nature of the work and what the Offeror must do to get the work done well. The prospective Offeror must also provide a complete and detailed description of the way it will do the work that addresses the areas of concern identified below. The OCC seeks insightful responses that describe proven, state-of-the-art methods. Recommended solutions should demonstrate the prospective Offeror's ability to quickly undertake and successfully complete the required tasks.

The prospective Offeror's work plan must clearly and specifically identify key personnel assignments, by individual, as to who would be addressing the deliverables set forth in Part Three of this RFP.

3. **Personnel Profile Summaries.** Each proposal must include a profile and/or resume that demonstrates the competency of the Offeror by submitting the following information:
 - **Team Members Names**
 - **Experience and Qualifications.** Experience and qualifications relevant to this project.
 - **Dates of Employment.** The length of time the team members performed relevant work requiring the necessary technical expertise.
 - **Project Experience.** The work of the team members on projects of similar or greater size and scope.

4. **References.** The prospective Offeror must include three references for which the prospective Offeror has successfully provided services on projects that were similar in their nature, size, and scope of work. These references must relate to work that was completed within the past five (5) years.

Note: Each reference must be willing to discuss the prospective Offeror's performance with an OCC representative.

5. **Cost Summary.** Each Offeror must provide a cost summary table showing: (1) Team Members' names, (2) their hourly rates, (3) their estimated hours, and (4) total estimated project cost for the Work Requirements and Deliverables set forth in Part Three of this RFP.

- a) The OCC requires the inclusion of ALL expenses associated with this project within the hourly rates and hours used to determine the costs for the deliverables, thereby eliminating the need for expense billings. Items to be taken into consideration in determining the cost of each deliverable should include supplies and materials, transportation and per diems, copying and overnight mail charges, etc. The successful Offeror will be responsible for direct payment to vendors for any requirements for overnight mail and any "on-site" photocopying charges.
- b) Offeror will invoice only for actual work performed and documented.

The OCC will not be liable for any costs the prospective Offeror does not identify in its proposal.

6. Submit an original W9 form along with your response to this RFP so that, if a contract is awarded, the OCC can process any invoices submitted by your company. The Internet link to the form is: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. The form must be signed and dated.
7. The Offeror must complete the Standard Affirmation and Disclosure form attached to this RFP which addresses Executive Order 2011-12K, Governing the Expenditure of Public Funds on Offshore Services. This executive order states in part "...No State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside of the United States..." By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Independent Contractor and affirms that both the Independent Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. To access the executed Executive Order, please visit: <http://procure.ohio.gov/pdf/EO201112K.pdf>.
8. Submit a statement as part of your response to this RFP, affirming that you or members of your staff do not currently owe any money to the state of Ohio or have an unresolved finding for recovery from the Auditor of State as per Ohio Revised Code (ORC) 125.25. To access more information regarding ORC 125.25, please visit: <http://codes.ohio.gov/orc/125.25>.
9. Campaign Contribution. House Bill 694 requires that every contract for goods or services of more than \$500 must contain a certification signed by the contract recipient certifying that the recipient is in compliance with ORC 3517.13 Divisions (I) or (J) regarding limitations on political contributions. If awarded a contract, the Offeror will certify that they are in full compliance with these Divisions of ORC 3517.13. For more information, please refer to <http://codes.ohio.gov/orc/3517.13>.

PART FIVE: EVALUATION OF PROPOSALS AND CONTRACT AWARD

Evaluation of Proposals. The evaluation process may consist of up to four distinct phases:

1. The Initial Review of all proposals for defects.
2. The Evaluation of the Proposals technical merits and cost summary.
3. Request for More Information (Interviews, Presentations, and Demonstrations).
4. Contract Negotiations.

It is within the purview of the OCC to decide whether phases three and four are necessary.

Initial Review. The proposals will be reviewed for their timeliness, format, and completeness. Any incomplete, or incorrectly formatted proposals may be rejected. Likewise, any defects may be waived or a prospective Offeror may be allowed to submit a correction.

OCC may reject unsolicited proposal amendments received after the deadline. OCC will reject late proposals regardless of the cause for the delay. Should a disagreement occur regarding delivery, the Offeror must provide evidence of delivery date and time.

Team Review of the Proposals. Each member of the review team will evaluate and numerically score the technical merits each Proposal. The evaluation will be according to the criteria contained in *PART SIX* of the RFP. The evaluation team has a right to break these criteria into components and weight any components of a criterion according to their perceived importance. The evaluation team will meet and review each Offeror's scores and come to an agreement on a consensus score.

Once the technical merits are evaluated, the cost summary will be evaluated.

Clarifications: During the evaluation process, clarifications may be requested from any Offeror under consideration and the clarification may give any Offeror the opportunity to correct defects in its Proposal. This may be done in cases where doing so would not result in an unfair advantage to the Offeror and the clarification is in the best interest of the OCC.

Rejection of Proposal. The OCC may reject any proposal that is not in the required format, does not address all the requirements of this RFP, or that the OCC believes is excessive in price or otherwise not in the best interest of the OCC to consider or to accept. In addition, the OCC may cancel this RFP, reject all the proposals, and seek to do the work through a new RFP or other means.

Offeror's Performance History with Other Jurisdictions. Using the form provided under Attachment One – Offeror's Performance History, Offerors must identify three (3) references from previous contracts of similar size and complexity to the scope of this RFP. A reference check questionnaire will be sent to the three references. If the Offeror has previous experience with OCC, the OCC will complete the questionnaire based on the Offeror's performance history. The OCC questionnaire will count as one of the three required reference checks.

Interviews, Presentations and Demonstrations. The evaluation team may require an Offeror to interview with the evaluation team regarding their Proposal. Such presentation, demonstrations, and interviews provide the Offeror with an opportunity to clarify its Proposal and to ensure a mutual understanding of the RFP content. These presentations, demonstrations, and interviews will be scheduled at the convenience and

discretion of the evaluation team. This phase of the evaluation is not an opportunity for the Offeror to engage in any negotiations over the form of the Proposal or required scope of the services.

Contract Negotiations. The final phase of the evaluation process may be contract negotiations. The evaluation team will schedule all negotiations. The selected Offeror(s) must negotiate in good faith. The evaluation team may conduct negotiations with any Offeror who submits a competitive Proposal, but the evaluation team may limit discussions to specific aspects of the RFP. Neither the Team, nor an Offeror, may disclose to another Offeror a priced Proposal or any other material information derived from competing Proposals. Any negotiated changes will be reduced to writing and become part of the contract file.

In the event that the Offeror fails to negotiate in good faith, OCC may terminate negotiations and is under no obligations to enter into a contract with the Offeror.

Contract Award. The contract will be awarded to the Offeror that demonstrates a clear understanding of OCC's expectations; can complete the scope of work and deliverables within the designated timeframe, and is the most competitive or lowest cost per point ration.

The OCC plans to tentatively award a Contract for this work no later than the date specified in Part Two of this RFP. The OCC reserves the right to change the contract award date if it becomes necessary.

In awarding the Contract, OCC will issue an award letter to the selected Offeror. The Contract will not be binding on OCC until the OCC's duly authorized representative signs the Contract, the OCC issues a purchase order and all other prerequisites identified in the Contract have occurred. The selected Offeror will receive an executed copy of the contract.

Contract. If this RFP results in a Contract award, the Contract will include this RFP, written amendments to this RFP, the Offeror's Proposal, and written, authorized amendments to the Offeror's Proposal. The RFP and Proposal will be attached and incorporated into the standard ODRC Service Contract (see Attachment Five). The Contract may also include any materials incorporated by reference in the above documents. The general terms and conditions for the Contract are contained in the Service Contract Attachment Five to this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of preference for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The Offeror's Proposal, as amended; and
4. The documents and materials incorporated by reference in the Offeror's Proposal.

Notwithstanding the order listed above, amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Contract.

The Independent Contractor must provide all deliverables under this Contract. If any of the deliverables in this Contract are provided beyond the end date of the contract, this Contract will be extended through a renewal contract. Any compensation to the Independent Contractor under the renewal contract will be subject to the Total Cost as set forth in this Contract.

PART SIX: EVALUATION CRITERIA

In the Proposal evaluation phase, the evaluation team will rate the submitted Proposals in response to this RFP by using the below criteria.

Criteria (As outlined in Part Four)	Does Not Meet	Meets	Exceeds	Score
1. Offeror Profile Summary (Attachment 1).	0	2	N/A	
2. Work Plan.	0	2	N/A	
3. Personnel Profile Summaries.	0	2	N/A	
4. References.	0	2	N/A	
5. Cost Summary.	0	2	N/A	
6. Completed W-9 Form.	0	2	N/A	
7. Completed Standard Affirmation and Disclosure Form.	0	2	N/A	
8. Statement Regarding Unresolved Finding for Recovery.	0	2	N/A	
9. Statement Regarding Compliance with Campaign Contributions.	0	2	N/A	
10. Veteran Preference (If appl. add 5% to Non-Veteran Cert)	0	-	-	Yes/No
<u>Total Points Criteria</u>				

Qualifications	Weight	Rating (0-5)	Extended Score
11. Relevant Experience of Work Projects (Similar Scope of Work)	20		
12. Relevant Work in Ohio	5		
13. Industry Level of Experience (Utilities, Government or Previous OCC Contracts)	15		
<u>Total Points for Qualifications</u>			

Work Plan	Weight	Rating (0-5)	Extended Score
14. Define Description of Approach, Method &/or Steps to Perform Tasks	25		
15. Proposal Organized & Covers all Deliverables	10		
16. Identification of Personnel Assignments for Each Task	5		
<u>Total Points for Work Plan</u>			

Understanding of Project	Weight	Rating (0-5)	Extended Score
17. Scope of Project – (Understand Requirements – Deliverables, Timeline, Reports, etc.)	10		
18. Purpose of Project – (Understanding of OCC’s Point of View and the Impact on Consumers)	25		
19. Knowledge of Issues – (How Much and/or the Type of Experience Related to SOW – Research Studies, Project Driven, Employment History)	30		
20. Identification of New Issues	5		
21. Knowledge of Ohio Regulations	10		
22. Understanding of OCC’s Policy/Position	20		
<u>Total Points for Understanding of Project</u>			

Total Technical Score: _____

The Offeror with the highest point total from all phases of the evaluation (Technical Points + Cost Points) will be recommended for the next phase of the evaluation.

OCC will apply the Veterans Friendly Business Enterprise preference as required by ORC 9.318 and OAC 123:5-1-16.

Technical Score: _____ + Cost Score: _____ = Total Score: _____

If OCC finds that one or more Proposals should be given further consideration, OCC may select one or more of the highest-ranking Proposals to move to the next phase. OCC may alternatively choose to bypass any or all subsequent phases and make an award based solely on the Proposal evaluation phase.

Attachment One - Forms

Cost Summary

**RFP OCC22083r-2 Duke Energy Ohio, Inc.
Utility Revenue Requirements (Rate Base & Operating Income) Expert**

Following is a cost summary showing a not-to-exceed project cost for the work required and deliverables as outlined in Part Three of this RFP. *Please use form as a guide and adjust as necessary.*

Deliverables / Description of Tasks	Employee	Hours	Hourly Rate	Estimated Cost

Total Cost:\$ _____

COST PROPOSAL POINTS OCC will use the information the Offeror submits on the Cost Summary Form to calculate Cost Proposal Points. OCC will calculate the Offeror's Cost Proposal points after the Offeror's total technical points are determined, using the following method:

Cost points = (lowest Offeror's cost/Offeror's cost) x Maximum Allowable Cost Points as indicated in the "Scoring Breakdown" table. "Cost" = Firm Fixed Price identified in the Cost Summary section of Offeror's Proposal. In this method, the lowest cost proposed will receive the maximum allowable points.

The number of points assigned to the cost evaluation will be prorated, with the lowest accepted Cost Proposal given the maximum number of points possible for this criterion. Other acceptable Cost Proposals will be scored as the ratio of the lowest Cost Proposal to the Proposal being scored, multiplied by the maximum number of points possible for this criterion.

An example for calculating cost points, where Maximum Allowable Cost Points Value = 60 points, is the scenario where Offeror X has proposed a cost of \$100.00. Offeror Y has proposed a cost of \$110.00 and Offeror Z has proposed a cost of \$120.00. Offeror X, having the lowest cost, would get the maximum 60 cost points. Offeror Y's cost points would be calculated as \$100.00 (Offeror X's cost) divided by \$110.00 (Offeror Y's cost) equals 0.909 times 60 maximum points, or a total of 54.5 points. Offeror Z's cost points would be calculated as \$100.00 (Offeror X's cost) divided by \$120.00 (Offeror Z's cost) equals 0.833 times 60 maximum points, or a total of 50 points.

OCC will apply the Veterans Friendly Business Enterprise preference as required by ORC 9.318 and OAC 123:5-1-16.

Cost Score: _____

Offeror Profile Summary

Offeror's Legal Name:	Address:	
Phone Number:	Fax Number:	E-mail Address:
Home Office Location: (If different than above)	Date Established:	Ownership:
Firm Leadership:	Number of Employees Nationwide: In Ohio:	Percentage of Women Employees Nationwide: In Ohio:
Percentage of Minorities Nationwide: In Ohio:	Number of Employees Directly Involved in Tasks Directly Related to the Work:	
Additional Background Information (Include relevant work in Ohio):		

Veteran Friendly Business Enterprise

If the Offeror qualifies as a Veteran Friendly Business Enterprise as defined by ORC 9.318 and OAC 123:5-1-01, the certification must also contain the following sentence:

(Insert Company name) affirms that they are certified as a Veteran Friendly Business Enterprise as defined by Ohio Revised Code 9.318 and Ohio Administrative Code 123:5-1-01(KK).

DEPARTMENT OF ADMINISTRATIVE SERVICES

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2019-12D

Governing the Expenditure of Public Funds on Offshore Services

PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.

No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, the Contractor must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver from the State has been attained to perform the services outside the United States.

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

AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

- 1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

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

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address) (City, State, Zip)

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

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

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

3. Location where state data will be located, by Contractor:

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

Name/Location(s) where state data will be located by subcontractor(s):

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

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

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

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

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

Attachment Two – OCC Standard Contract – Terms & Conditions

Contract No.: _____	RFP/ITB No.: _____
OAKS No.: _____	PUCO Case No.: _____

**CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
CONTRACTOR**

I. PARTIES

This Contract for Professional Services ("Contract"), by and between the **Office of the Ohio Consumers' Counsel** ("OCC"), State of Ohio, located at 65 E. State Street, 7th Fl., Columbus, Ohio 43215, and **Consultant Name** located at **Street Address, City, State Zip** (hereinafter referred to as "Independent Contractor") is effective as of the date of the signature by the parties.

II. CONTRACT AMOUNT

- A. The parties agree that the Independent Contractor shall provide OCC with expert technical assistance as outlined in the RFP No. OCC22083r-2 and defined in the Independent Contractors Proposal dated _____.
- B. In consideration for the promises and performance of the Independent Contractor as set forth herein, OCC agrees to pay to the Independent Contractor for services rendered that are in conformance with this Contract. Payment will be made within thirty (30) days from the date of OCC's receipt of proper invoices and proof of performance for services performed in accordance with the Scope of Work, Deliverables and Duties of the Independent Contractor and the Terms and Conditions for Professional Services (Attached hereto and incorporated herein as "Exhibit A") of this Contract for Professional Services, as follows:

ESTIMATED BUDGET

<u>Scope of Work</u>	<u>Rate Up To</u>	<u>Hours</u>	<u>Estimated Cost</u>
Deliverables 1	\$ _____	_____	\$ _____
Deliverables 2	\$ _____	_____	\$ _____
Deliverables 3	\$ _____	_____	\$ _____
Deliverables 4	\$ _____	_____	\$ _____
<u>Total Cost (not to exceed)</u>			\$ _____

The invoices provided to OCC by the Independent Contractor shall be submitted as outlined below in "**Exhibit A**", **Section II. TERMS AND CONDITIONS OF PAYMENT, paragraph A. and B.**"

The invoices provided by the Independent Contractor shall only reflect, and the OCC shall only pay for work actually performed. The total amount includes all travel and office expenses (Travel and office expenses are imbedded in the contract hourly rate and cannot be separately charged). Invoices shall be emailed to: OCC-Invoices@occ.ohio.gov

III. TERM OF CONTRACT AND APPROVAL

This contract is effective on the date it is signed by the OCC and approved by the Office of Budget and Management (Division of State Accounting).

As the current General Assembly cannot commit a future General Assembly to expenditure, this Contract shall expire at the close of business on June 30, 2022.

Prior to expiration of the original term or any renewed term, OCC may renew this Contract on the same terms and conditions by giving notice to the Independent Contractor of this Contract renewal. 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. Any compensation to the Independent Contractor under the renewal contract will be subject to the *Total Costs* as set forth in this Contract unless a change in the amount is specifically requested by OCC.

Work performed after the contract ending date will not be paid. The Independent Contractor will only be compensated for work that is specifically requested by an OCC employee and is performed in accordance with Scope of Work, Deliverables and Duties of the Independent Contractor and the Terms and Conditions for Professional Services (Attached hereto and incorporated herein as "Exhibit A") of this Contract.

IV. COMMUNICATION WITH THE MEDIA

The Independent Contractor shall not communicate with the media – including, but not limited to newspaper, television, or radio personnel regarding any OCC Request for Proposal, Invitation to Bid or contract the Independent Contractor has responded to or entered into. The Independent Contractor shall direct any and all inquiries received from the media to the OCC.

V. SCOPE OF WORK, DELIVERABLE AND DUTIES OF INDEPENDENT CONTRACTOR

Scope of Work. Upon request and assistance by an OCC employee, the Independent Contractor will complete deliverables as outlined in the RFP No OCC22083r-2.

The Independent Contractor shall not perform work unless specifically requested to do so by an OCC employee.

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

Approved & Accepted by:

Contractor Name

Office of the Ohio Consumers' Counsel

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT A

STATE OF OHIO

STANDARD TERMS & CONDITIONS

I. GLOSSARY – The following definitions are applicable to all components of the Contract:

- A. **Acceptance:** Approval and retention by the Ordering Agency of any products, supplies, services or other Deliverables, delivered to fulfill Contract requirements.
- B. **Contracting Agency:** The agency with which the Contractor enters into the Contract and that has the authority to enforce the Terms and Conditions of this Contract. The Contracting Agency may also be the Ordering Agency.
- C. **Default:** The omission or failure to perform any obligation under this Contract.
- D. **Deliverable:** Any Contractor-provided products, supplies, services or work product described in the specifications of the Contract.
- D. **Ordering Agency:** The entity, including State agencies and State of Ohio Cooperative Purchasing members authorized under Section 125.04 of the Ohio Revised Code, that purchases and accepts the products, supplies, services or other Deliverables under this Contract and that is responsible for payment. The Ordering Agency may also be the Contracting Agency.
- E. **State:** The State of Ohio.
- F. **Time and Materials Contract:** A Contract in which Contractor is paid (1) an hourly rate for labor actually performed and (2) if applicable and with prior approval by the Ordering Agency, for the cost of the materials or supplies actually used by the Contractor. Such rates and costs shall be established through Contractor's submission of a price sheet, written quote, estimate, or invoice, as approved by the State. Hourly rates may include wages, overhead, general and administrative expenses, and reasonable profit. Materials or supplies may include the Contractor's direct and indirect costs attributable to the work performed.

II. REGULATORY CONTRACT REQUIREMENTS

- A. **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- B. **APPROPRIATION OF FUNDS.** The State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires. If appropriations are approved, the State may continue this Contract past the current biennium by issuing written notice of continuation to the Contractor. Any obligations of the State are subject to Section 126.07 of the Ohio Revised Code.
- C. **COMPLIANCE WITH LAW.** The Contractor must comply throughout the duration of the Contract with all applicable federal, state, local laws and Executive Orders while performing under this Contract.

The independent Contractor will comply with Ohio IT-04 and any associated agency policies if given access to statewide and agency IT resources.
- D. **CONFLICT OF INTEREST/ETHICS.** Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.
- E. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery pursuant to Section 9.24 of

the Ohio Revised Code. If the warranty is false on the date the parties signed this Contract, the Contract is void *ab initio* and the Contractor shall immediately repay any funds paid under this Contract.

- F. **DEBARMENT.** Contractor represents and warrants that it is not debarred from consideration for contract awards by any governmental agency. If this representation and warranty is found to be false, this Contract is void *ab initio* and the Contractor shall immediately repay any funds paid under this Contract.
- G. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all Contractor employees, while working on State property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- H. **ELECTIONS LAW.** Unless this Contract was solicited by competitive bid pursuant to Section 125.07 of the Ohio Revised Code, Contractor hereby certifies that all applicable parties are in full compliance with Section 3517.13 of the Ohio Revised Code.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Section 125.111 of the Ohio Revised Code and all related Executive Orders.

Before a Contract can be awarded or renewed, an Affirmative Action Plan must be submitted to and approved by the Ohio Department of Administrative Services, Equal Opportunity Division.

- J. **EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES.** The Contractor affirms it understands Executive Order 2011-12K and shall abide by those requirements in the performance of the Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure form to abide with Executive Order 2011-12K affirming no services of the Contractor or its subcontractors under this Contract will be performed outside the United States. During the performance of this Contract, the Contractor must not change the location(s) of the country where the services are performed, change the location(s) of the country where the data is maintained, or made available unless a duly signed waiver from the State has been attained to perform the services outside the United States.

- K. **GOVERNING LAW.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio.
- L. **INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under the Contract complete and submit to the Ordering Agency the Independent Contractor/Worker Acknowledgement form.

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this Contract, shall serve as Contractor's certification that Contractor is a "Business entity" as the term is defined in Section 145.037 of the Ohio Revised Code.

- M. **REGISTRATION WITH THE SECRETARY OF STATE.** Contractor certifies that it is either:

1. A company that is properly registered with the Ohio Secretary of State; or
2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
3. Exempt from registration requirements of the Ohio Secretary of State.

N. TAXES. Pursuant to Section 5739.02 of the Ohio Revised Code, the State is exempt from sales tax.

O. TRADE. Pursuant to Section 9.76(B) of the Ohio Revised Code, Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Contract period.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

P. TRAVEL. 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. The State will pay for all additional travel expenses that it requests in accordance with Section 126.31 of the Ohio Revised Code and Rule 126-1-02 of the Ohio Administrative Code.

Q. USE OF MBE AND EDGE VENDORS. Section 125.081 of the Ohio Revised Code requires State agencies to set-aside purchases for Minority Business Enterprises (MBE) and Executive Order 2008-13S encourages use of Encouraging Diversity, Growth and Equity (EDGE) businesses. Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified MBE and EDGE vendors.

III. **CONTRACT CONSTRUCTION**

A. TERM OF CONTRACT. The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the earliest of: (1) the ending date stated in the Contract; (2) the Contract is fully performed by both parties; (3) the Contract is canceled or terminated; or (4) the Contract expires at the end of a biennium unless continued by the State. This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of the State. The State will issue a notice to the Contractor if the State decides to renew this Contract. The Contractor shall not obligate resources in anticipation of a renewal until notice is provided.

B. CONTRACT AMENDMENTS / WAIVER.

1. **AMENDMENTS.** No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. Notwithstanding the foregoing, the State may reduce non-material changes to writing and provide notice to the Contractor.

2. **WAIVER.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms or to any other terms of this Contract. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

C. ASSIGNMENT / DELEGATION. The Contractor must not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

D. BINDING EFFECT. Subject to the limitations on assignment provided elsewhere in this Contract, this Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

E. LANGUAGE CONSTRUCTION. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

- F. **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.
- G. **HEADINGS.** The headings in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- H. **INJUNCTIVE RELIEF.** Nothing in this Contract is intended to limit the State's right to injunctive relief if such is necessary to protect its interests or to keep it whole.
- I. **NOTICES.** For any notice under this Contract to be effective the notice must be made in writing and delivered to the appropriate contact provided in the Contract.
- J. **ORDER OF PRIORITY.** Unless otherwise stated elsewhere in this Contract, the Special Terms and Conditions will take precedence over the Standard Terms and Conditions. If there is any inconsistency or conflict between this Contract and any provision incorporated by reference by the Contractor, this Contract will prevail.
- K. **PUBLICITY.** The Contractor shall not do the following without prior, written consent from the State:
 1. Advertise that the Contractor is doing business with the State; or
 2. Use this Contract as a marketing or sales tool.
- L. **SEVERABILITY.** If any provision of the Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- M. **SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying the Contractor's subcontractors. The Contractor may not enter into subcontracts related to the Contract after award without written approval from the State. If any change occurs during the term of the Contract, that requires a change to identified subcontractors, the Contractor shall amend its list of subcontractors and request written approval from the State. The State reserves the right to reject any subcontractor submitted by the Contractor.

All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all sub-contracting and third-party manufacturer work performed under the Contract. In addition, all subcontractors agree to be bound by all of the Terms and Conditions and specifications of the Contract. The Contractor will be the sole point of contact with regard to all contractual matters.
- N. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, maintenance, publicity, warranties and limitations on damages shall survive the termination of this Contract.

IV. ORDER AND PAYMENT PROVISIONS

- A. **CERTIFICATION OF FUNDS/PURCHASE ORDER REQUIREMENTS.** None of the duties or obligations in this Contract are binding on the State, and the Contractor will not begin performance on this Contract, until all of the following conditions are met:
 1. All statutory provisions under the Ohio Revised Code have been met.
 2. All necessary funds are made available by the appropriate Ordering Agency.
 3. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate Ordering Agency.
 4. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.
- B. **CONTRACT ORDERS.** Ordering Agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by Ordering Agencies by telephone, facsimile, electronically, in person, payment card (if applicable) or purchase order from authorized employees of the Ordering Agency. Neither the Ordering Agency nor the Contracting Agency will be responsible for orders placed by unauthorized employees.

- C. **INVOICE REQUIREMENTS.** The Contractor or dealer, authorized to submit invoices, must submit an original invoice to the office at the following email address.

OCC-Invoices@occ.ohio.gov

The Contractor will only be compensated for the Deliverables accepted by the State. To be a proper invoice, the invoice must include the following:

1. The purchase order number authorizing the delivery of supplies or services;
2. State of Ohio Contract Number (if used);
3. Agency Name;
4. Agency Billing Address;
5. Delivery location of supplies or services;
6. Contractor Name;
7. Contractor Address;
8. Contractor's Unique Invoice Number;
10. Itemization of deliverables or supplies provided, including:
 - List of Deliverable(s) performed or supplies
 - Date(s) deliverable was performed or supplies delivered
 - Number of hours per deliverable(s)
 - Name of person performing the work
 - List hourly rate
 - Amount due
 - Summarize total amount due, if applicable
 - Remaining balance on contract, if applicable
11. For leases, the invoice must also include the payment number (e.g., 1 of 36);
12. For time and material Contracts, the invoice must reflect labor hours actually worked and, if applicable, supplies used; and;
13. Clear statement of total payment expected.

- D. **PAYMENT DUE DATE AND PROCESS.** In accordance with Section 126.30 of the Ohio Revised Code payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The State's preferred method of payment is by electronic funds transfer. However, the Ordering Agency may also make payment by State of Ohio payment card or by warrant issued by the Auditor of State. At the time of Contract award, Contractor must be able to accept all forms of payment from the State and Ordering Agency.

V. LIABILITY PROVISIONS

- A. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that:

1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with the Contractor's standard business practices.
4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
5. The Deliverables comply with all governmental, environmental and safety standards.
6. The Contractor has the right to enter into this Contract.

7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
8. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to the State.
10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

Any other express warranties offered by the Contractor shall be a minimum of one year or the Contractor's standard warranty whichever is longer.

- B. INDEMNITY.** The Contractor must indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities including, but not limited to, bodily injury to any person (including injury resulting in death) or damage to property, that may arise out of, or are related to, the Contractor's performance under this Contract, providing such is due to the negligence or other tortious conduct of the Contractor, the Contractor's employees, agents, or subcontractors.

The Contractor must also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions:

1. Modify the Deliverable so that the Deliverable is no longer infringing;
2. Replace the Deliverable with an equivalent or better item;
3. Acquire the right for the State to use the infringing Deliverable as intended; or
4. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.

The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the Ohio Attorney General.

- C. WORKERS' COMPENSATION.** Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

- D. AUTOMOBILE AND GENERAL LIABILITY INSURANCE.** During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement 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. The State reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy(ies) endorsed to reflect per project / per location general aggregate limits.

Failure to submit the insurance certificates may result in the Contractor being deemed not responsive. Said certificates shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the State. Failure of the Contractor to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best, unless otherwise approved in writing by the State.

E. LIMITATION OF LIABILITY. Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this Contract, the parties agree as follows:

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. The Contractor further agrees that the Contractor shall be liable for all direct damages due to the fault or negligence of the Contractor.

F. PRODUCT RECALL. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or in the case of consumable product, found to be unfit for human consumption by the packer, processor, manufacturer or by any state or federal regulatory agency, the Contractor shall notify the Contracting Agency and all Ordering Agencies within two business days after notice has been given. The Contractor shall, at the option of the Ordering Agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. The Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the Ordering Agency. At the option of the Ordering Agency, the Contractor may be required to reimburse storage and handling fees to be calculated from time of delivery and acceptance to actual removal. The Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

VI. PERFORMANCE AND COMPLIANCE

A. AUDITS. The Contractor must keep all financial records in a manner consistent with Generally Accepted Accounting Principles (GAAP) or equivalent accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by Contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Contract and until the expiration of three (3) years after final payment under this Contract, the Contractor agrees to provide the State, or any authorized representatives providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor must, for each subcontract in excess of \$2,500, require its subcontractors to agree to the same provisions of this Section. The Contractor may not artificially divide Contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to Contracts where federal funds are used and the federal government requires audits of all subcontracts regardless of the amount of the Contract.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State, the State's designee or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations, or overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages as well as the cost of the audit.

B. F.O.B. DESTINATION/ACCEPTANCE. The Contractor must provide Deliverables under this Contract F.O.B. Destination. The place of destination will be specified by the Ordering Agency on the agency's purchase order or other ordering document. Cost of the freight must be borne and paid by the Contractor unless otherwise stated.

All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State. Unless otherwise provided in this Contract, the State will determine whether the Contractor provided each Deliverable required in this Contract and has fully met all work requirements of this Contract. Title to any Deliverables will pass to the State on Acceptance of the Deliverable.

C. RETURNED GOODS. When the use of this Contract involves the purchase of goods, the following applies:

(A) Returned goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.), shall be returned to the Contractor at the Contractor's expense. The Contractor shall make arrangements to remove the returned goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.

(B) For orders of custom manufactured items, the Contractor must provide a production sample of the item to the ordering agency for acceptance. The production sample must be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

(C) Returned goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

- D. CUSTOM DELIVERABLES.** All custom work done by the Contractor and covered by this Contract will belong to the State with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable. Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

- E. FORCE MAJEURE (EXCUSABLE DELAY).** Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. For purposes of this Section, the term "force majeure event" includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.

If the State or the Contractor cannot perform any part of its obligations under this Contract because of force majeure, that party is excused from those obligations, to the extent that performance is prevented by the force majeure event and that party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event. If there is only a delay in performance, such delay may extend only for that time lost because of the force majeure event. At any time a party is unable to perform those above-referenced obligations, it must also do the following:

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information of the force majeure event;
3. Provide a proposed revised performance date to make up for performance delays due to the force majeure event. When applicable, the revised schedule must provide for performance time not to exceed the time lost as a result of the force majeure event.

- F. CONTRACT PERFORMANCE MANAGEMENT.** The Contracting and Ordering Agencies are responsible for administering and monitoring the Contractor's compliance and performance on this Contract. Therefore, the Contractor must respond to complaints about performance of the obligations in this Contract to such entities in a timely manner. If the Contractor fails to perform any one of its obligations under this Contract, it will be in default.

If the Contractor fails to satisfactorily correct the performance or compliance issue within the time designated by the Agency, the Contracting Agency may employ all available options and remedies, including termination of the Contract if necessary to resolve the Contractor's continued nonperformance or noncompliance.

- G. QUALITY ASSURANCE.** At the option of the Contracting or Ordering Agency samples may be taken from deliveries made and submitted for laboratory tests. The Ordering Agency will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the terms and conditions of the Suspension/Termination provision of this Contract will be applied.

H. CONTRACT REMEDIES.

1. Actual Damages. The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.

2. Liquidated Damages. If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the default, for every day that the default is not cured by the Contractor.

3. Deduction of Damages from Contract Price. The State may withhold payment and deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor's compensation still due on the Contract.

- I. SUSPENSION/TERMINATION.** In the event of suspension or termination the State will issue a notice. Any notice of suspension or termination, in full or in part, will be effective as specified in the notice. The Contractor must immediately cease all work, refuse any additional orders, and take all steps necessary to minimize the costs the Contractor will incur related to this Contract as directed by the notice. Suspension, termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or limit the State's rights in such.

At the State's request, the Contractor must immediately prepare a final report and deliver such report to the State. The report must detail the work completed and/or the orders received and not processed prior to the time of notice. If applicable, the report must include the percentage of the Project's completion, estimated time for delivery of all orders received but not processed, any costs incurred by the Contractor in doing the Project to date, and any Deliverables completed or partially completed but not delivered to the State at the time of notice. Based on the State's approval of the final report and as directed, the Contractor must deliver work, whether completed or not, to the State. Any delivered work will be subject to approval by the State. The Contractor may be entitled to payment for any Deliverables that have been delivered and accepted at a pro-rated amount based on the compensation structure of this Contract.

1. Contract Suspension.

a. Suspension for Cause. If the Contractor fails to perform any one of the Contractor's obligations under this Contract, the Contractor will be in default and the State may suspend rather than terminate this Contract. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.

b. Suspension for Convenience. In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section H.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension. The notice of suspension whether, with or without cause, will be effective immediately, on the Contractor's receipt of the notice.

2. Contract Termination.

a. Termination for Convenience. The State may terminate this Contract, or an Ordering Agency may terminate an Order, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated contract price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the State has accepted before the termination. Total payments will not exceed the

amount payable to the Contractor as if the Contract had been fully performed. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.

b. Termination for Cause. If the Contractor fails to perform any of its obligations under this Contract, the Contractor will be in default and the State may terminate this Contract in accordance with this Section. Termination for cause includes but is not limited to:

- 1) **Termination for Persistent Default.** The State may terminate this Contract for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified the Contractor of its third default, the State may terminate this Contract without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.
- 2) **Termination for Endangered Performance.** The State may terminate this Contract if the State determines that the performance of the Contract is endangered through no fault of the State.
- 3) **Termination for Financial Instability.** The State may terminate this Contract if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the State finds other evidence of the Contractor's financial instability.
- 4) **Termination for Delinquency, Violation of Law.** The State may terminate this Contract if the State determines that the Contractor is delinquent in its payment of federal, state or local obligations including but not limited to taxes, workers' compensation insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. The State also may terminate this Contract if the State determines that the Contractor has violated any law during the performance of this Contract.
- 5) **Termination for Subcontractor Default.** The State may terminate this Contract for the default caused by the Contractor's subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.
- 6) **Termination for Failure to Retain Certification, License, and Permits.** The State may immediately terminate the Contract if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications, and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.

J. TIME IS OF THE ESSENCE. Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with the Ordering Agency. If the Contractor is not able to or does not provide the Deliverables to the Ordering Agency or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, the State may obtain any remedy as described herein or any other remedy at law.

K. ePROCUREMENT. The State plans to establish an eProcurement System which, in part, will provide certain electronic catalog hosting and contract management services to enable Ordering Agencies to access an online site to procure goods and services. It is the expectation that the Contractor will cooperate with the State if this Contract is identified to be a part of the eProcurement System.

VII. DATA AND INFORMATION CONTROL

A. CONFIDENTIALITY. The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by the Contractor as a result of this Contract, without the written permission of the State. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material is confidential. In addition, the Contractor may not disclose any documents or records excluded by Ohio law from public records disclosure requirements. The Contractor's obligation to maintain the confidentiality of the information will not apply where the information:

1. Was already in the Contractor's possession before disclosure by the State, and the information was received by the Contractor without the obligation of confidence;
2. Is independently developed by the Contractor;
3. Is or becomes publicly available without breach of this Contract except as provided in the next full paragraph;
4. Is rightfully received by the Contractor from a third party without an obligation of confidence.

5. Is disclosed by the Contractor with the written consent of the State; or
6. Is released in accordance with a valid order of a court or governmental agency, provided that the Contractor:
 - a. Notifies the State of such order immediately upon receipt of the order; and
 - b. Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the Contractor shall not disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, notwithstanding item 3 above, the Contractor does have an obligation to maintain the confidentiality of such sensitive personal information.

The Contractor must return all originals of any information provided by the State and destroy any copies the Contractor has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

- B. PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION.** The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that this Contract, as well as any information, Deliverables, records, reports, and financial records related to this Contract are presumptively deemed public records. The Contractor understands that these records will be made freely available to the public unless the State determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure. The Contractor must comply with any direction from the State or an Ordering Agency to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information.
- C. SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State rules, policies, and regulations regarding State-provided IT resources, data security and integrity. When on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- D. USAGE REPORTS.** At no cost to the State and in addition to other reports required by the Contract, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by all Contracting Agencies and Co-operative Purchasing Program members. The report may include customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information. Electronic media is the preferred method for these reports. Failure to provide the requested reports may be deemed as an event of default.