

REQUEST FOR QUOTATION

21-117746

DATE ISSUED: 02/09/21

The State of Ohio, through the Ohio Department of Public Safety (ODPS) Administration Division is requesting a quotation for:

**Lawn Care at the Ohio Department of Public Safety Shipley and Center School
1952 & 1970 W. Broad Street, Columbus, OH 43223**

You are invited to submit a quotation for the services described in this document.

Signed Electronic quotations are due no later than 3:00 p.m. 03/11/21.

Send to:

Ronald Wehner
Chief, Procurement Services
Ohio Department of Public Safety
1970 W. Broad St., 5th Floor
Columbus, Ohio 43223

Signed Electronic Quotations will be accepted at rjwehner@dps.ohio.gov.

ODPS is not responsible for electronic / technical difficulties in the submission of quotations. ODPS will reject any quotations received after the deadline. An offeror that mails their quotations must allow for adequate mailing time to ensure its timely receipt. Offerors must allow sufficient time since the State may reject late Proposals regardless of the cause for the delay.

Estimated Schedule:

RFQ Release	February 9, 2021
Inquiry Period Begins	February 9, 2021
Inquiry Period Ends	March 8, 2021 at 8:00 a.m. EST
RFQ opening	March 11, 2021 at 3:00 p.m. EST
Evaluations / Interviews Conducted	March 11, 2021 thru March 19h, 2021
Anticipated Award Date	March 22, 2021
Registration for Site Visit ends	February 26, 2021 at 1:00 PM
Site Visit	March 1, 2021 at 1:00 PM

The optional site visit will be the only opportunity to visit the site. Bidders must pre-register for the site visit (Refer to Site Visit Instructions below).

Exhibit 1**Scope of Work**

The purpose of this request is to establish pricing for Lawn Care at the Ohio Department of Public Safety (ODPS), located 1970 W. Broad Street, Columbus, Ohio 43223 and 1952 W. Broad Street, Columbus, Ohio 43223 (the "Facility"), in accordance with the specifications, requirements, and terms and conditions (Supplement 1) listed below. The Independent Contractor shall furnish all labor, equipment, materials, and incidental items necessary to perform the requested lawn care services.

General Requirements

- The Independent Contractor (Contractor) shall perform landscape services commencing at 7:00 a.m. and finishing at 4:00 p.m., Monday through Friday. Work outside of these time-frames shall require a forty-eight (48) hour advance approval of the Facility Manager.
- ODPS requires a single contact point for scheduling, administration, and billing to eliminate confusion for questions to responsible parties after award. Supplier shall provide the contact information for single point of contact. The awarded supplier (s) shall update the contact list whenever changes are made during the term of this contract.
- Services for the remainder of Fiscal Year 21 (FY21) shall be effective from the date of award through June 30, 2021. Services for FY22 and FY23 shall be from July 01, 2021 through June 30, 2023. Services will not be performed on the State Holidays listed below. The Contractor should perform the services on an alternative day during a holiday week.

STATE OBSERVED FY21 Holidays	
February 15 th	President's Day
May 31 th	Memorial Day

STATE OBSERVED FY22 Holidays	
July 5 th	Independence Day
September 6 th	Labor Day
October 11 th	Columbus Day
November 11 th	Veteran's Day
November 25 th	Thanksgiving
December 24 th	Christmas
December 31 th	New Year's Day
January 17 th	Martin Luther King Day
February 21 st	President's Day
May 30 th	Memorial Day

STATE OBSERVED FY23 Holidays	
July 4 th	Independence Day
September 5 th	Labor Day
October 10 th	Columbus Day
November 11 th	Veteran's Day
November 24 rd	Thanksgiving
December 26 th	Christmas
January 2 nd	New Year's Day
January 16 th	Martin Luther King Day
February 20 th	President's Day
May 29 th	Memorial Day

ODPS Facility Grounds

This is an estimate of the grounds

- **ODPS Facility 1970 West Broad Street Site**

64,800 SF/1.4 acres in planting beds with 2,850 LF of bed edging

258 Ornamental Trees

41 Tree Rings (4')

190 Shrubs

165 Ornamental Grasses

128 Bushes

6,000 LF of sidewalk edging

5.3 acres mowed

Spray and trim woody plant life @ 600 LF of tree line – East between ODPS and City Park

- **Centre School Facility 1952 West Broad Street Site**

8,400 SF/0.2 acres in planting beds with 350 LF of bed edging

21 Ornamental Trees

10 Tree Rings (4')

3 Bushes

35 Shrubs

300 Ornamental Grasses

1,450 LF of sidewalk edging

1.6 acres mowed

Spray and trim woody plant life @ 525 LF of fence line – East between ODPS and City Park

Site Visit

March 1, 2021 at 1:00 PM

The optional site visit will be the only opportunity to visit the site. Bidders must pre-register for the site visit by February 26, 1:00 PM.

The purpose of the visit is for all Bidders to familiarize themselves with the location and size of the facilities, the security guidelines at the facility, and specific areas to be serviced.

Please contact Deborah K. Bryan, during normal business hours, no later than 24 hours before the site visit via email, dbryan@dps.ohio.com to make arrangements for the site visit. Please include names, phone numbers, and email address for anyone attending. ODPS cannot ensure attendance at the site visit for Bidders that fail to register by the deadline.

The site visit will commence promptly at the time stated, barring an unforeseen circumstance that results in a delay of the site visit. Attendance will be taken. The ODPS will not be responsible to a bidder for their failure to obtain information discussed during the site visit due to their failure to attend and/or arriving after the site visit has convened. Bidders must have with them a picture I.D. (such as a valid Ohio driver's license) and company I.D. in order to be admitted to facilities.

Mowing, Trimming, and Edging

The Contractor shall mow and trim lawn areas of at the Facility Thirty (30) cuts per season between April 1st and November 30th annually, as weather permits and as detailed below:

- **ODPS Facility 1970 West Broad Street Site** – 5.3 acres with 6,000 LF of sidewalk edging
- **Centre School Facility 1952 West Broad Street Site** – 1.6 acres with 1,450 LF of sidewalk edging & 525 LF of fence line

Mow and trim weekly approximately thirty (30) cuts per season from April 1st through November 30th assuring that grass is maintained to three (3) inches in height. Mow and trim every other week commencing around the second week in August (depending on weather conditions) during hot, dry weather and maintain turf to four (4) inches in height to avoid turf stress. If conditions require more than the base thirty (30) seasonal cuts, the Contractor shall provide additional cuts at the same bid rate upon prior approval from the Agency.

Mowing shall not be performed when it may be detrimental to turf health. Not more than 1/3 total blade shall be removed during any mowing event. Mowing will be suspended during drought conditions as determined by the facility manager or designee. The Contractor will be held accountable for any turf damage caused by improper or unauthorized mowing.

- Trimming of grass shall take place within two (2) days of mowing and as needed to keep a neat edge between the buildings, fences and the lawn. Fence line trimming may require the application of chemical treatment to control growth.
- Keep all walkways, parking lots, entryways, and courtyard areas free of grass cuttings and debris. Mow in direction to avoid blowing cuttings onto parked cars. (Notify the facility manager or designee of mowing schedule so cars can be moved if necessary).
- All sidewalks curb lines, concrete slabs and planting bed edges shall be mechanically edged to maintain a neat, clean appearance. All edging debris shall be swept or blown clean and or otherwise disposed of. This shall be reflected in your unit price for edging
- Spray and trim woody plant life @ 600 LF of tree line behind ODPS and @ 525 LF behind Centre School facility and playground – East between ODPS and City Park. Once a month between the months of May – September.

Note: Litter and debris removal must be performed prior to mowing.

Pruning of trees, shrubs and Bushes

- **ODPS Facility 1970 West Broad Street Site**
 - 258 Ornamental Trees
 - 41 Tree Rings (4')
 - 190 Shrubs
 - 165 Ornamental Grass
 - 128 Bushes

- **Centre School Facility 1952 West Broad Street Site**

21 Ornamental Trees
10 Tree Rings (4')
3 Bushes
35 Shrubs
300 Ornamental Grasses

- The Contractor shall prune trees in early spring, conforming to the National Arborist Association Class II standard pruning procedures. ANSI A300 is the accepted method of pruning. Prune deciduous trees and remove dead and dying branches to retain natural shape and growth. Maintain proper heights and clearances for vehicular and pedestrian traffic. The Class II pruning standards link: <http://www.bbtreehn.com/uploads/3/9/6/3/39636735/pruning-standards.pdf>
- The Contractor shall prune shrubs two (2) times during the growing season. Contractor shall remove all weeds in flower beds, tree rings, sidewalks, curbs, and islands in the parking lot and grounds weekly or as the weeds emerge between April 1st and November 30th annually. Dispose of weeds off-site. Pre and post-emergent herbicides may be used at the Contractor's option. **Preferred chemical for non-selective weed control is Rodeo® or equivalent.** No additional payments will be made for herbicide applications. **Plant material, other than weeds, killed by application of herbicides will be replaced at the Contractor's expense.**

The cost of all weed control work shall be included in the contract price for landscape maintenance. This task will only be considered complete when weeds from all beds, tree rings, sidewalks, curbs, and islands in the parking lot and grounds are removed. Inspections by the Facility Manager will be performed to determine if this task has been satisfactorily completed each week.

Fertilization & Insect Control

6.9 acres

The Contractor shall fertilize the lawns and shrubs areas at the Facility from April 1st to November 30th. Turf shall be fertilized at the Facility with a well-balanced slow-release fertilizer a minimum of four times per year as follows to avoid burn:

- Chemical weeding and pest control products are to be applied by a pesticide applicator licensed by the Ohio Department of Agriculture in the appropriate category and in accordance with State and Federal Regulations and requirements. Contractor shall adhere to requirements for dormant oil sprays and preventive pesticide applications. Contractor shall use only EPA approved chemicals, rates and methods of application per manufacturer specifications and shall not apply herbicides
- **Pre-season Soil Sample Required – The Independent Contractor shall provide Faculty Services Pre-Season soil sample results.**
- To provide Facility Services with MSDS sheets for all chemicals and pesticides used during the term of the contract.
- Pesticide application shall be according to need and not by schedule.
- Products are to be applied by an applicator licensed by the Ohio Department of Agriculture in the appropriate category and in accordance with all applicable rules and regulations.

Mulching

- The Contractor shall furnish and install double-shredded dark hardwood mulch applied at a depth of two inches (2") in all beds and tree rings on the property between April 1st and May 10th annually(see attached site map)

- At the conclusion of mulch installation, walks and curbs adjacent to work areas that are used for bulk storage are to be swept or blown clean.

Weeding

- The Contractor shall spray weeds along Fence line on the east side of the Shipley and Centre School facilities. **Weeds that are 3 inches or above must be trimmed and sprayed.**
- The Contractor shall weed the flower beds and tree islands.

Aeration

6.9 acres

- The Contractor shall perform Aeration of the turf surfaces to remove turf soil plugs to a depth of 2 to 4 inches over the entire lawn using a piston driven aerator with 5/8 inch diameter core cutters. Aerator shall have up and down coring motion leaving clearly defined holes by pulling the cores from the soil. This is to be performed during early fall (September 25th to October 20th).

Over Seeding

6.9 acres

- The Contractor shall furnish and apply to over seed/renovate the entire lawn area twice, once in each direction by slice or slit process, with the following seed mixture at the rate of 3-4 lbs. / 1,000 square feet during early fall (**September 25th to October 20th**).
 - **70%** improved Kentucky bluegrass with a minimum of two (2) seed types selected from the following cultivars: Adelphi, Glade, Merit, Parade, Ran 1, or Touchdown.
 - **30%** Tall Fescue with a minimum of two (2) seed types selected from the following cultivars: Apache, Finelawn 1, Jaguar, Mustang, or Tribute.

End of Season Cleanup

6.9 acres

- The Contractor shall perform the final cleanup of leaves and debris and prepare landscape for winter after November 15th and prior to December
- The cleanup may be done by manual raking, vacuuming, or equipment mounted devices used for this type of cleanup. Minimum services required are as follows:
 - Cleaning/Raking of lawn area to remove leaves and debris. Contractor is responsible for removing leaves, limbs, twigs, and debris from site.
 - Trimming/pruning of bushes, shrubs, hedges, ornamental trees, ornamental grasses and or brush. Contractor is responsible for removing leaves, limbs, twigs, and debris from site.
 - Level out, rake, and reseed area around roadways or parking area, as needed, which were damaged by snow removal operations the prior winter.

Repair grass areas

6.9 acres

At the direction of the Facility Manager, The Contractor shall provide and apply topsoil and seed to damaged areas of the lawn these areas may be the result of tree removals, unplanned excavations, vehicle damage, drought, etc. Repairs provided under this section are separate from those services provided in other sections of these specifications.

Fiscal Year 21 Cost Summary

- The Contractor shall perform services at the Facility according to the price schedule below for Year Fiscal Year 21 (FY21). Service Period for FY21 is from the date of award through June 30, 2021.
- All the Contractor's personnel working in or around buildings designated for service under this contract are required to wear distinctive clothing/uniforms.
- The Contractor's specified markup shall not exceed 15% on Contractor's supplied materials.
- The Basis of Award will be made to the lowest responsive and responsible offeror meeting the requirements specified in the scope of work.
- The contractor will be paid for work performed at the expected rates.

Fiscal Year 21 Cost Summary

Bid Line	Service	Description	Max Qty	Unit Price	Max Qty
					\times Unit Price = Unit Total
1	Mowing, trimming, and edging 6.9 acres with 7,450 Lf	Mow, trim*, and edge all lawn areas at the Shipley Building – Approximately April 1st to June 30 th , as weather permits	15		
2	Pruning Trees and Pruning & Trimming of all Shrubs and Bushes 279 Ornamental Trees 51 Tree Rings 225 Shrubs 131 Bushes	Prune Trees and Prune and Trim Shrubs and Bushes Spring	1		

3	Grass / lawn Fertilization & insect prevention 6.9 acres	Spring, Summer, Fall & Winter Fertilization for all grass / lawn areas with insect prevention	2		
4	Shrubs and bushes plant Fertilization	Fertilize Shrubs and Bushes in Spring	1		
5	Mulching (specified by the ODPS) 37,317 square feet – see site plan	Spring – apply fresh mulch to all tree rings and flower beds and island areas as noted on the site plan	1		
6	Weeding Mulched Flower Beds and Tree Rings 37,317 square feet – see site plan	Weeding all tree and flower bed areas as noted on the site plan. Bi-Weekly in the months of May and June	5		
7	Aeration 6.9 acres	Fall Aeration for all lawn areas	1		
8	Over Seeding 6.9 acres	Over Seeding Grass area	1		
9	End of Season Clean Up 6.9 acres	Final cleanup of leaves and debris and prepare landscape for winter after November 15 th .	1		
10	Repair of Grass Areas 6.9 acres	Repair Grass Areas as Requested by Facility MGR If needed	N/A		
11	Spray and trim woody plant life @ 600 LF of tree line – East between ODPS and City Park	Once a month between May – June	2		
12	Spray and trim woody plant life @ 525 LF of fence line – East between ODPS and City Park	Once a month between May – June	2		

Fiscal Year 22 and Fiscal Year 23 Cost Summary

- The Contractor shall perform services at the Facility according to the price schedule below for Fiscal Year 22 (FY22) and Fiscal Year 23 (FY23). Service Period for FY22 is from July 1, 2021 through June 30, 2022. Service Period for FY23 is from July 01, 2022 through June 30, 2023. Pricing chart below is based on a one (1) year service period.

- All the Contractor's personnel working in or around buildings designated for service under this contract are required to wear distinctive clothing/uniforms.
- The Basis of Award will be made to the lowest responsive and responsible offeror meeting the requirements specified in the scope of work.
- The contractor will be paid for work performed at the expected rates.

Fiscal Year 22 and Fiscal Year 23 Cost Summary

Bid Line	Service	Description	Max Qty / each Fiscal Year	Unit Price	Max Qty x Unit Price = Unit Total
1	Mowing, trimming, and edging 6.9 acres with 7,450 Lf	Mow, trim*, and edge all lawn areas at the Shipley Building – Approximately July 1st to June 30, as weather permits	30		
2	Pruning Trees and Pruning & Trimming of all Shrubs and Bushes 279 Ornamental Trees 51 Tree Rings 225 Shrubs 131 Bushes	Prune Trees and Prune and Trim Shrubs and Bushes Spring and Fall	2		
3	Grass / lawn Fertilization & insect prevention 6.9 acres	Spring, Summer, Fall & Winter Fertilization for all grass / lawn areas with insect prevention	4		
4	Shrubs and bushes plant Fertilization	Fertilize Shrubs and Bushes in Spring and Fall	2		
5	Mulching 37,317 square feet – see site plan	Spring – apply fresh mulch to all tree rings and flower beds and mulched island areas as indicated on the site plan	1		
6	Weeding Mulched Flower Beds and Tree Rings 37,317 square feet – see site plan	Weeding all tree and flower bed areas as noted on the site plan. Bi-Weekly in the months of May, June, July; once a month from August – November.	10		

7	Aeration 6.9 acres	Fall Aeration for all lawn areas	1		
8	Over Seeding 6.9 acres	Over Seeding Grass area	1		
9	End of Season Clean Up 6.9 acres	Final cleanup of leaves and debris and prepare landscape for winter after November 15 th .	1		
10	Repair of Grass Areas 6.9 acres	Repair Grass Areas as Requested by Facility MGR If needed	N/A		
11	Spray and trim woody plant life @ 600 LF of tree line – East between ODPS and City Park	Once a month between May – September	7		
12	Spray and trim woody plant life @ 525 LF of fence line – East between ODPS and City Park	Once a month between May – September	7		

Signatures:

Independent Contractor must print page and sign below. No electronic signatures will be accepted.

Independent Contractor's Signature
(Independent Contractor's Typed Name)

Thomas Stickrath, Director
Ohio Department of Public Safety

Printed Name

Date: _____

Date: _____

Supplement 1

ODPS TERMS AND CONDITIONS

BY SUBMITTING THIS QUOTE, THE VENDOR AGREES TO BE BOUND BY THESE OHIO DEPARTMENT OF PUBLIC SAFETY TERMS AND CONDITIONS. ALL OTHER TERMS AND CONDITIONS ARE HEREBY REJECTED. IN THE EVENT THE VENDOR HAS ACCEPTED TERMS AND CONDITIONS WITH THE OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, THOSE TERMS WILL SUPERSEDE THESE TERMS AND APPLY TO THIS PURCHASE.

SUBMISSION OF INVOICES: The Independent Contractor will not submit more than one invoice for work performed within a 30 day period. Late submission may be subject to a 5% withholding of payment. In order to be considered a proper invoice, The Independent Contractor shall include on all invoices the proper vendor identification number, purchase order number, and total cost of services; and submit an original copy monthly to the billing address located on the applicable purchase order. The State of Ohio is exempt from all state and local taxes and does not agree to pay any taxes. ODPS will make payment to The Independent Contractor within thirty (30) days of receipt of an acceptable invoice. O.R.C. Section 126.30 applies to this Agreement and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month which equals one-twelfth of the rate per annum prescribed by O.R.C. Section 5703.47. Unless expressly provided for elsewhere in this Agreement, The Independent Contractor shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this Agreement.

AVAILABILITY OF FUNDS: The obligations of ODPS under this Agreement are subject to the determination by the Director of Budget and Management that sufficient funds have been appropriated by the General Assembly to ODPS for the purposes of this Agreement and to the certification of the availability of such funds by the Director as required by O.R.C. Section 126.07. ODPS may suspend or terminate this Agreement if the General Assembly fails to appropriate funds or if federal grant funds are not available for any part of the work under this Agreement.

AUDITOR RECOVERY FINDING - O.R.C. Section 9.24: The Independent Contractor affirmatively represents and warrants to the ODPS that the Independent Contractor is not subject to a finding for recovery under O.R.C. Section 9.24, or that the Independent Contractor has taken the appropriate remedial steps required under O.R.C. Section 9.24, or otherwise qualifies under that section. The Independent Contractor agrees that if this representation and warranty is false, the Agreement shall be void ab initio as between the parties to this Agreement, and any funds paid by the ODPS hereunder shall be immediately repaid to the ODPS, or an action for recovery may be immediately commenced by the ODPS for recovery of said funds.

DEBARMENT: The Independent Contractor warrants that it is not currently subject to a finding by the Ohio Department of Administrative Services debarring the Independent Contractor from consideration for contract awards, and that Independent Contractor does not currently appear on any federal or State of Ohio debarment list. In the event that, during the course of this Agreement, the Independent Contractor is debarred from consideration for the contract awards by the Ohio Department of Administrative Services, or otherwise appears on any federal or State of Ohio debarment list, then the ODPS may terminate this Agreement immediately.

WORKERS' COMPENSATION AND OTHER BENEFITS: The Independent Contractor and its employees shall be covered by workers' compensation coverage purchased and maintained by the Independent Contractor. In addition, the Independent Contractor should ensure that any subcontractors maintain workers' compensation insurance at all times during the term of this Agreement. Any workers' compensation claims filed by the Independent Contractor, or its employees or subcontractors, as a result of work performed under this Agreement is not covered under ODPS's workers' compensation insurance. The Independent Contractor is not entitled to any State employment benefits, including, but not limited to the Public Employees Retirement System of Ohio (OPERS), for work performed under this Agreement. The Independent Contractor acknowledges and agrees any individual providing personal services under this Agreement is not a public employee for purposes of Chapter 145 of the Revised Code.

DRUG FREE WORKPLACE: The Independent Contractor certifies that to the best of his / her ability, all of his / her employees will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state property. Failure to comply may result in IMMEDIATE termination of this Agreement.

EQUAL OPPORTUNITY REQUIREMENTS:

- A. The Independent Contractor, and any of its subcontractors, shall comply with the requirements under O.R.C. Section 125.111. The Independent Contractor, and any of its subcontractors, shall not discriminate against anyone because of race, color, religion, sex, age, disability, national origin, ancestry, or military status.
- B. The Independent Contractor certifies that both the Independent Contractor and any of its subcontractors are in compliance with all applicable federal and state laws, as well as rules and regulations governing fair labor and employment practices.
- C. The ODPS encourages both the Independent Contractor and any of its subcontractors to purchase goods and services from certified Minority Business Enterprise (MBE) and Encouraging Diversity Growth and Equity (EDGE) Independent Contractors.

ETHICS AND CONFLICT OF INTEREST: Independent Contractor agrees to abide by all provisions of the Ohio Ethic's Law, including O.R.C. 102.02, O.R.C. 102.03, O.R.C. 102.04 and O.R.C. 2921.42.

Pursuant to O.R.C. 102.03(A) (1) no present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

Per O.R.C. 102.04 (D): The Independent Contractor affirms by his / her signature that:

(a) He / She is not elected or appointed to an office of or employed by the General Assembly or any department, division, institution, instrumentality, board, commission, or bureau of the State, excluding the Courts,

OR

(b) The Independent Contractor affirms by his / her signature that he / she is a public official appointed to a non-elective office or is a public employee, but, is exempt from the provisions of O.R.C. 102.04 (A) or (B) because,

1. The Independent Contractor is supplying the good and / or services which are subject of the agreement to an agency other than the one with which he / she serves; AND
2. The Independent Contractor has filed the required statements with the following agencies:
 - a. The appropriate ethics commission; AND
 - b. The public agency with which he / she serves; AND
 - c. The public agency to whom the goods and / or services will be provided.

The Independent Contractor shall not have any interest, direct or indirect, which is incompatible or in conflict with the carrying out of the terms of this Agreement.

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

EXECUTIVE ORDER 2011-12K, BANNING THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES: The Independent Contractor affirms to have read and understands Executive Order 2019-12D

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 Independent 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 Independent 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.

A. Termination, Sanction, Damages:

If Independent 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 Independent Contractor or any of its subcontractors perform any such services, Independent Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Independent 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 Independent Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Independent 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 one percent (1%) of the value of the Contract.

The State, in its sole discretion, may provide written notice to Independent Contractor of a breach and permit the Independent Contractor to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Independent Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Independent 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 Independent Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

B. Assignment / Delegation:

The Independent 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.

OPEN TRADE: Pursuant to O.R.C. 9.76 (B), Vendor warrants that vendor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

RESPONSIBILITY FOR CLAIMS: The Independent Contractor agrees to indemnify and hold the ODPS harmless from any and all claims for personal injury or property damage resulting from the fault or negligence of the Independent Contractor and from claims for wages or overtime compensation due its employees in rendering services under this Agreement, including payment of all costs in defense of any claim made under the Fair Labor Standards Act or any other federal or state law. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

OWNERSHIP:

- A. Any and all written, electronic, or multimedia documents, presentations, reports, studies, deliverables, and / or software developed under this Agreement (hereinafter referred to under this Section as "Deliverables") shall become the property of the ODPS. The ODPS, and any person, agency, or instrumentality providing financial assistance for the work performed under this Agreement shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. The Independent Contractor shall not obtain copyright, patent, or other proprietary protection for the Deliverables without the written approval of the ODPS, except that the Independent Contractor shall reserve its rights in all methods, pre-existing work, software, and data used to prepare the Deliverables. The Independent Contractor shall not include in any Deliverables any copyrighted matter, unless the copyright owner and any person, agency, or instrumentality providing financial assistance for the work performed under this Agreement gives prior written approval to use such copyrighted matter in the manner provided under this Agreement. The Independent Contractor must identify in writing, prior to the start of work under this Agreement, any and all proprietary, copyrighted, and / or patented materials it intends to use.
- B. The Independent Contractor agrees that all Deliverables may be made freely available to the general public to the extent required by law.
- C. This Section shall survive the termination of this Agreement and may be enforced by the ODPS in any court of competent jurisdiction.

GOVERNING CLAUSE: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. If any provision under this Agreement is later determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected by such determination.

SUSPENSION AND TERMINATION:

- A. The Independent Contractor or the ODPS may suspend or terminate this Agreement, with or without cause, by providing thirty (30) days written notice to the other party.
- B. Any violations or breach of the terms stated herein, by the Independent Contractor, shall provide the ODPS with the option of canceling this Agreement in its entirety, or withholding payment until such time as the violation or breach is remedied. Such option shall in no way limit or exclude any other remedies available to the ODPS.
- C. If either party fails to perform any of the requirements of this Agreement, or is in violation of a specific provision of this Agreement, then the non-breaching party may suspend or terminate this Agreement if the breaching party fails to cure its non-performance or violation within ten (10) business days following delivery of written notice of the breach. In the case of late payment by ODPS, however, the Independent Contractor may not suspend or terminate this Agreement unless the payment is more than sixty (60) days past due, and O.R.C. Section 126.30 shall apply.
- D. If this Agreement is suspended or terminated, the Independent Contractor shall cease work on the suspended or terminated activities, suspend or terminate all subcontractors relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursement and minimize cost, and, if requested by the ODPS, furnish a report describing the status of all work under this Agreement, including results and conclusions accomplished, and such other matters as the ODPS may require. The requirements in this paragraph shall occur in accordance with the following:
 1. If the Agreement is suspended or terminated by the ODPS, the requirements in Paragraph 18. D. of this Agreement shall commence upon the date the Independent Contractor receives notice of suspension or termination.
 2. If the Agreement is suspended or terminated by the Independent Contractor, the requirements in Paragraph 18. D. of this Agreement shall commence upon the date the Independent Contractor sends notice of suspension or termination.

E. If this Agreement is suspended or terminated, the Independent Contractor, upon submission of a proper invoice, shall be entitled to compensation which shall be calculated by the ODPS according to Paragraph 3 of this Agreement for the work performed prior to the date on which the Independent Contractor either receives notice of termination or suspension or sends notice of suspension or termination, whichever is applicable, less any funds previously paid by, or on behalf of, the ODPS.

Regardless of which party terminates the Agreement, any payments made by the ODPS in which services have not been rendered by the Independent Contractor shall be prorated and returned to the ODPS. Such payment(s) must be sent to the ODPS within thirty (30) days of the date on which the Independent Contractor either receives notice of termination or suspension or sends notice of suspension or termination, whichever is applicable. The ODPS shall not be liable for any further claims.

BACKGROUND CHECK: A routine background check, at ODPS expense, may be performed on the Independent Contractor for assignment to this Agreement. The Independent Contractor may be required to complete a "Background Information Form" furnished by the ODPS. Failure to pass the background check will result in immediate dismissal.

ANTITRUST ASSIGNMENT: The Independent Contractor assigns to the ODPS all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by the Independent Contractor's suppliers and subcontractors.

RECORD KEEPING: During the performance of this Agreement and for a period of three (3) years after its completion, the Independent Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the ODPS, upon request and at such times as are commercially reasonable.

FORCE MAJEURE: If the State or Independent Contractor is unable to perform any part of its obligations under this Agreement 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 Agreement. 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, or explosions; restraint of government and people; war; strikes; and other like events or any other cause that could be not reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

CHANGE OR MODIFICATION: This Agreement constitutes the entire agreement between the parties on the subject matter of this Agreement. This Agreement supersedes all prior agreements, understandings, or representations, whether oral or written, concerning the subject matter of this Agreement. Any changes or modifications of this Agreement shall be made and agreed to in writing. The provisions outlined in these Terms and Conditions shall take priority over any inconsistent or conflicting provisions included in the Independent Contractor's offer or quote, or any other provisions applicable to or incorporated into this Agreement.