

**REQUEST FOR PROPOSAL**  
**Union County Council of Governments**  
**Union County, Ohio**

**HVAC-R Solutions for Heating, Cooling and Ventilation Systems and  
Facilities on and Indefinite Delivery/Indefinite Quantity Basis**

**DEADLINE FOR SUBMISSIONS: Monday, April 1, 2024**

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## NOTICE OF REQUEST FOR PROPOSALS

Sealed proposals will be received by the Union County Council of Governments of Union County, Ohio (UCCOG) for the following:

### **HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities on an Indefinite Delivery/Indefinite Quantity Basis.**

As a pilot program, the UCCOG is seeking proposals from qualified, licensed independent Contractors with demonstrated professional competence and experience to provide all labor, equipment, goods, and supplies necessary to provide HVAC-R solutions to operate, maintain, and modernize efficient and sustainable heating, cooling and ventilation systems and facilities on an Indefinite Delivery/Indefinite Quantity basis. Under the authority of R.C. §9.48, as amended, the UCCOG wishes to provide local government buyers access to commercial products and services at volume discount pricing as their needs may arise and without engaging in a full procurement process.

The UCCOG may select one Contractor to provide HVAC-R Services on an as-needed basis to interested political subdivisions or the UCCOG may create a “pool” of Contractor(s). The actual number of pool participants chosen will depend on the number of qualified proposals received.

Indefinite Delivery/Indefinite Quantities (ID/IQ) Contract. UCCOG does not guarantee any minimum or maximum amount of work as a result of any award ensuing from this RFP and reserves the right to award work on an as-needed basis.

Any contract made under this RFP will be **without** a Guaranteed Contract Minimum Amount or a Not-to-exceed Maximum Amount. Any ensuing contract will be an Indefinite Delivery/ Indefinite Quantities (ID/IQ) Contract. UCCOG will award to one or more responsive and responsible contractors. UCCOG reserves the right to adjust these amounts, if in its best interest to do so, prior to contract approval.

A copy of this Notice is posted at <https://PublicNoticesOhio.com>. The complete Request for Proposals and Instructions is available online at:

<https://www.unioncountyohio.gov/UCCOGHVACR2024RFP> or upon request through the UCCOG via email at: [uccogrfp@marysvilleohio.org](mailto:uccogrfp@marysvilleohio.org).

Submit sealed proposals no later than 3:00 p.m. on Monday, April 1, 2024, at the Union County Commissioners Office, 233 West Sixth Street, Marysville, Ohio 43040. The name of each RFP responder will be publicly announced at that time.

The submitted proposal shall be clearly marked “**HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities ID/IQ Proposal**” on the front of the envelope or the top of the package that encloses the proposal.

See the full Request for Proposals for detailed instructions as to the content and form for proposals.

UCCOG may award contracts to the offerors whose proposal is the most advantageous taking into consideration the evaluation factors and criteria in the complete Request for Proposals. UCCOG may award contracts in whole or in part to one or more offerors. Union County reserves the right to make awards throughout 2024 and 2025 depending on needs and availability of new providers in the community.

The UCCOG reserves the right to reject any and all proposals, or to increase or decrease or omit any items, or to waive any informality in any proposal(s).

Union County Council of Governments of Union County, Ohio, 233 West 6<sup>th</sup> Street, Marysville, Ohio, 43040, is responsible for the publication of this Notice.

Union County Council of Governments

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To The Publisher:

Please publish the foregoing Notice in its entirety one (1) time.

As provided in R.C. §7.16

- Please post the foregoing Notice in its entirety on <https://www.PublicNoticesOhio.com/>
- Please run a single (1) insertion of the following abbreviated form one (1) week after the foregoing full-format publication date.

Please provide a Proof of Publication to the Union County Council of Governments, 233 W. Sixth Street, Marysville, Ohio, 43040

Cost of this ad should be billed to Union County Council of Governments.

**Abbreviated Form:**

Notice-Request for Proposals

The Union County Council of Governments invites qualified Respondents to submit Proposals under R.C. 307.362 for **HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities on and Indefinite Delivery/Indenite Quantity Basis – 2024 & 2025** to provide HVAC-R solutions to operate, maintain, and modernize efficient and

sustainable heating, cooling and ventilation systems and facilities to provide local government buyers access to commercial products and services at volume discount pricing..

Proposals must be received by 3.00 p.m. on Monday, April 1, 2024, at the Board of County Commissioners, Union County, Ohio, 233 W. 6<sup>th</sup> Street, Marysville, Ohio 43040.

A copy of the complete Notice is posted at <https://PublicNoticesOhio.com>. The complete Request for Proposals is available online at <https://www.unioncountyohio.gov/UCCOGHVACR2024RFP>

Union County Council of Governments, 233 W. 6<sup>th</sup> Street, Marysville, Ohio, 43040; [uccogrfp@marysvilleohio.org](mailto:uccogrfp@marysvilleohio.org) is responsible for publication of this notice.

# 1. GENERAL INFORMATION

## 1-A. Purpose and Scope

The purpose of this Request for Proposal (RFP) is to receive sealed proposals to provide the required services described below. The Union County Council of Governments (UCCOG) is not responsible for any costs incurred by the respondents in the preparation and submission of this bid. This RFP does not constitute a contract for services performed or to be performed.

As a pilot program, the UCCOG is seeking proposals from qualified, licensed independent Contractors with demonstrated professional competence and experience to provide all labor, equipment, goods, and supplies necessary to provide HVAC-R solutions to operate, maintain, and modernize efficient and sustainable heating, cooling and ventilation systems and facilities on an Indefinite Delivery/Indefinite Quantity basis. Under the authority of R.C. §9.48, as amended, the UCCOG wishes to provide local government buyers access to commercial products and services at volume discount pricing as their needs may arise and without engaging in a full procurement process.

If suitable proposals are made in response to this RFP, the UCCOG may enter into one or more contracts that prequalify one or more selected offerors to perform the Work within one or more of the categories of HVAC-R services.

Indefinite Delivery/Indefinite Quantities (ID/IQ) Contract. UCCOG does not guarantee any minimum or maximum amount of work as a result of any award ensuing from this RFP but will reserve the right to award work on an as-needed basis.

All contracts awarded shall be indefinite quantity contracts with no minimum guarantee of any business. Contractors eligible to perform the Work will respond to future Statement of Work (SOW) Solicitations issued and awarded by the UCCOG, one of its Active Members, or one of its Cooperative Members. Future SOW Solicitations that result in awards (“Project Statements of Work” or “Project SOWs”) will be managed by the party that initiated the request for the Statement of Work Solicitation. This RFP provides details on what is required to submit a Proposal for the Work, how the UCCOG will evaluate the Proposals, and what will be required of the Contractor in performing the Work. See **Statement of Work Solicitation Process** below.

This RFP also gives the estimated dates for the various events in the submission process and selection process. As a contractual vehicle to prequalify one or more selected offerors, and with no minimum guarantee for the Work, this RFP does not provide dates for Performance of the Work. While all dates provided in this RFP are subject to change, prospective offerors must be prepared to meet them as they currently stand.

Once awarded, the initial term of the Contract will extend from date of award through December 31, 2025. Upon expiration of the initial term, the UCCOG and a successful offeror may mutually agree to extend or amend their Contract. Any such renewal of all or part of the Contract also is subject to the satisfactory performance of the Contractor

**The Contractor must pay the UCCOG a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. Re revenue share that the Contractor must pay equals two percent (2%) of the total quarterly sales reported. The revenue share is included in the prices reflected on the Price List and reflected in the total amount charged in ordering activities. The Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.**

**1-B. Background Information**

The UCCOG is a regional council of governments formed under the Ohio Revised Code to foster cooperative agreements and shared services among its members. It has three active members, Union County, the City of Marysville, and the Marysville School District and also accepts cooperative members to participate in the Council's unit priced contract services. Cooperative Members are members only by way of an interlocal purchasing agreement and do not have voting rights or a position on the Board of Directors. Organizations in Ohio that have joined as a Cooperative Member can participate in any contract resulting from this RFP under Ohio Revised Code §9.48.

**1-C. General Instructions**

The proposal shall be submitted in a sealed envelope to:

Union County Council of Governments  
Attn: **HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities ID/IQ Proposal**  
Union County Commissioner's Office  
233 West Sixth St.  
Marysville, OH 43040

The submitted proposals shall be clearly marked "**HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities ID/IQ Proposal**" on the front of the envelope or the top of the package that encloses the proposal. All submitted proposals shall be submitted to the Union County Board of Commissioners office where they shall remain sealed and held until the time of the public proposal opening.

Proposals must be received at the above address no later than 3:00 p.m. on Monday, April 1, 2024, to be considered.

All respondents must furnish the UCCOG with one (1) complete printed copy of the proposal and an electronic copy of the proposal (preferably in a single PDF or Word document) shall be submitted.

Proposals received after the scheduled receipt date and time will not be accepted and will be marked "Late" and may be returned to the contractor. All proposals and materials submitted become the property of the UCCOG and will not be returned.

The UCCOG is not responsible for any cost incurred by the contractors in seeking this award. All costs of pursuing this contract shall be borne by the contractor.

Faxed or emailed proposals will not be considered. The proposal document must be signed with an original ink signature by the person authorized to sign the proposal. The UCCOG reserves the right to accept any proposal, to reject any proposal or all proposals, to waive irregularities and/or informalities in any proposal, to increase or decrease or omit any item or items, and to make the award in any manner deemed in the best interest of the UCCOG. Selection of a firm will be made by a selection committee comprised of Union County Council of Governments Governing Board members and employees of its entities. The selection decision will be based upon the UCCOG's judgment of relevant criteria listed in section 1-D.

1. Schedule: The following schedule is planned (Eastern Time Zone):

**DATE EVENT**

- 03/14/2024 RFP Released
- 03/27/2024 Questions and Clarifications Deadline at 5:00 p.m.
- 04/01/2024 Proposal Due at 3:00 p.m.
- 04/01/2024 Announcement of Proposals Received at 3:00 p.m.
- 04/04/2024 Proposal Review Completion and Contractor(s) Selected for Project
- 04/11/2024 Contract Finalized and Project Initiated

2. Questions and Clarifications Regarding the RFP: Contractors shall submit all questions in writing or via email exclusively to the Union County Council of Governments. All questions must be received no later than 5:00 p.m. EDT on Wednesday, March 27, 2024. All responses to questions regarding this RFP will be made available online at <https://www.unioncountyohio.gov/UCCOGHVACR2024RFP> within 3 business days of submission date.

Questions concerning this RFP or the proposal procedures should be addressed to:

Union County Council of Governments  
233 West Sixth St.  
Marysville, OH 43040  
Fax: (937)-645-3057

Email: [uccgrfp@marysvilleohio.org](mailto:uccgrfp@marysvilleohio.org)

3. Subcontractors: If subcontractors are requested and approved, the primary contractor shall retain full responsibility to the Contracting Member for all work completed or uncompleted by the subcontractor. Subject to the approval of the Contracting Member, subcontractors may be used by any firm with the following provisions:

- a. The company submitting the bid will be considered the prime contractor
- b. The prime contractor must perform greater than 65% of the billable work
- c. All tasks to be performed by subcontractors must be clearly identified
- d. All fees for tasks performed by subcontractors must be clearly identified



- e. The subcontractors must meet all criteria as defined for the prime contractor.
4. Non-Discrimination Practices: The vendor shall agree that it shall not discriminate in any manner based on sex, race, color, age, religion, national origin, or ancestry of any person.
5. Payment Schedule: The Contracting Member and the selected contractor will determine a payment schedule at the time of contract negotiations with the selected firm.
6. Project Time Frame: The UCCOG requires that the project be completed by the date agreed upon with the Cooperative Member.
7. Proposal Opening: All proposals received will remain sealed until the proposal opening. The proposals will be opened at 3:00 p.m., Monday, April 1, 2024 in the Board of Commissioners Hearing Room, located at 233 West Sixth Street, Marysville. At that time, Proposals will be opened and logged. Proposals will not be available for public viewing during the proposal review and contractor selection process. Respondents are not required to be present at the proposal opening.
8. Contract Finalization: The successful proposer(s) will be required to sign a written contract with the Contracting Member and to furnish and maintain a good and approved contract bond, as hereinafter specified, after the award of the Contract. The Contract shall be in the form mutually agreeable to the Contracting Member and the Contractor.
9. Insurance & Workers Compensation: The selected firm must maintain liability and workers compensation insurance throughout the term of any contract. The company shall save harmless the Contracting Member and its officers or agents from all claims, demands, payments, suits, actions, recoveries, and judgements of every kind brought against it by reason of act or omission of the company. The selected company will be required to provide proof of insurance at the time of selection.
10. Unresolved Finding for Recovery. Revised Code Section 9.24 prohibits the State from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery (a "Finding") if the Finding is unresolved at the time of the award. This also applies to renewals of contracts. By submitting a Proposal, the offeror warrants it is not subject to an unresolved Finding under Section 9.24 at the time of its submission. Additionally, the offeror warrants it will notify the Office of Information Technology in writing immediately upon becoming subject to such an unresolved Finding after submitting its Proposal and before the award of a Contract under this RFP. Should the State select the offeror's Proposal for award of a Contract, this warranty of immediate written notice will apply during the term of the Contract, including any renewals or extensions. Further, the State may treat any unresolved Finding against the Contractor that prevents a renewal of the Contract as a breach, in accordance with the provisions of Attachment Four, General Terms and Conditions.
11. Licenses, Permits, and Regulations: Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor.
12. Public Records. All Proposals and other material offerors submit will become the property of the State and may be returned only at the State's option. Offerors should not

include any confidential information in a Proposal or other material submitted as part of the evaluation process. All Proposals will be open to the public after the State has awarded the Contract.

13. Proposals: Proposals are solicited for the work described above. Proposals shall be submitted on a unit price basis.

14. Examination of Sites: Contractors will be required to satisfy themselves by personal examination at the sites identified in any Statement of Work Solicitation under a contract and by examination and study of the State of Work Solicitation documents as to the conditions existing and difficulties likely to be encountered in the course of the work. No plea of ignorance, as a result of failure to make such examinations on the part of the Contractor, will be accepted as an excuse for failure to fulfill the provisions of the Contract.

15. Drug Free Workplace: The Contractor must be enrolled and in good standing in the Ohio Bureau of Workers' Compensation Drug-Free Workplace (DFWP) Discount Program or a similar program approved by the Bureau of Workers' Compensation within eight (8) days of the bid opening.

16. Waiver of Defects. The State may waive any defects in any Proposal or in the submission process followed by an offeror, but the State will only do so if it believes it is in the State's interest and will not cause any material unfairness to other offerors.

**The Statement of Work Solicitation Process.** Work under the Contract will be by the Solicitation process. The Active Members or Cooperative Members of the UCCOG may issue SOW Solicitations to any Contractor awarded a contract under this RFP. The Contractor may partner with one or more subcontractors. All subcontractors shall be identified within the pre-qualified Contractor's proposal submitted in response to the SOW Solicitation. The steps identified below describe the process of a Statement of Work Solicitation.

A Contractor will not be required to respond to every Statement of Work Solicitation issued as a result of this Contract, but they will be expected to respond to a majority of the Statement of Work Solicitations issued during the course of a year. Should a Contractor not respond to a majority of the Solicitations issued, it may be removed from the list of prequalified Contractors.

**The Statement of Work Solicitation Content.** Each SOW Solicitation shall contain a Project Statement of Work that will include, but not be limited to, the following components, which will be defined in each SOW Solicitation and the services required. The UCCOG may revise or refine the SOW Solicitation format and content requirements as needed.

**Content.** Each Statement of Work Solicitation will contain the sections listed below:

- Background information for the deliverables-based project, including:

- a. Member information
- b. Project name
- c. Project objective
- d. Project description
- e. Project schedule
- f. Project milestones
- g. Other relevant information

- Scope of Work
  - a. Description of scope of work (in and out) and project requirements, including plans and specifications, as appropriate
  - b. Description of constraints, assumptions
  - c. Detailed description of the Work
  - d. Expected duration
  - e. Restrictions on location of data & work
- SOW Response Submission Requirements
  - a. Response format, content requirements
  - b. Staffing plan, personnel resumes, time commitment, organizational chart
  - c. Contingency plan, if applicable
  - d. Work plan, project plan
  - e. Fee Structure including estimated work effort for each deliverable
  - f. Cost summary
- Communication Plan
- SOW Evaluation Criteria
- SOW Solicitation Schedule
- Project schedule
- Limitation of Liability (Identification of Limitation of Liability applicable to the specific SOW Solicitation. Unless otherwise stated in this section of the SOW Solicitation, the Limitation of Liability will be as described in Attachment Four, Part Four of the Contract General Terms and Conditions.

**Subcontractor Letters.** Each SOW Solicitation will require that for each proposed subcontractor, the

Respondent must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:

1. The subcontractor's legal status, federal tax identification number, D-U-N-S number, and principal place of business address;
2. The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;

3. A description of the work the subcontractor will do;
4. A commitment to do the work if the Contractor is selected; and
5. A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.

The UCCOG member and the Contractor will negotiate terms and conditions of the work not required under the Master Contract. The UCCOG member who makes the contract will be responsible for administering the project under the Statement of Work. UCCOG will have no obligation to the Contracting Member or the Contractor regarding the rights and obligations of those parties under the Statement of Work.

#### **1-D. Selection Criteria**

The UCCOG will select one or more firms which it determines to be capable of providing a high-quality product at a reasonable cost, in accordance with the Ohio Revised Code. The following is a partial list of criteria which will be used to evaluate proposals: experience and personnel qualifications, compliance with RFP instructions, costs, delivery schedules, fee distribution, knowledge and technical expertise, subcontractor details, proposed procedures, and references. The UCCOG reserves the right to reject any proposal and all proposals, or to increase or decrease or omit any item or items, or to waive any informality in any proposal(s), and to award the contract to the firm(s) most advantageous to its members, taking into consideration the evaluation factors and criteria in accordance with the Ohio Revised Code as determined by the UCCOG.

#### **1-E. Proposal Content**

All proposals must follow the same format. No exceptions to this format will be accepted, and all sections of the format must be clearly addressed in order for a proposal to be accepted for evaluation. The purpose of the required format is to simplify the proposal evaluation processes and to ensure that all proposals receive the same orderly review.

All proposals must include the following sections:

1. Cover Letter
2. Project Work Plan/Technical Approach
3. Subcontractor Information
4. Optional Information Section
8. Delinquent Taxes Affidavit
9. Contractor Corporation Affidavit along with copy of resolution
10. Request for Taxpayer Identification Number, W-9
11. Affidavit of Compliance with Campaign Contribution Limitations
12. Non-Collusion Affidavit
13. Affidavit of Authority of Corporation to Proposal

## 14. Proposal for Bidder's Signature

### 1-F. Proposal Content Details

1. Cover Letter: Provide a cover letter introducing the document as to its content and purpose. The cover letter should also identify the individual within your organization who will respond to questions the UCCOG may have regarding your proposal. Include title, phone number, fax number, email address and address where this person may be contacted. Also include specific highlights of your firm in your proposal.

2. Project Work Plan/Technical Approach: This section is intended to be the heart of the proposal. The offeror should include a complete list and/or description of the equipment, goods, and supplies available as HVAC-R solutions to operate, maintain, and modernize efficient and sustainable heating, cooling and ventilation systems and facilities. The prices for the respective items and services should be stated. Alternatively, the Offeror may incorporate by reference these materials from other available sources, such as G.S.A. schedules.

3. Subcontractors: The contractor must provide a list that includes name, address, and contact information for all potential subcontractors. The contractor must also provide a description and percentage of work to be performed by all subcontractors.

4. Optional Information: This section may contain a variety of information such as an additional or alternative technique not listed in the RFP, additional or alternative processes that would enhance the project or reduce costs, or additional project information that the contractor wishes to convey to the UCCOG evaluators.

5. Certification of Personal Property Tax; See Page 30

6. Contractor Corporation Affidavit and Copy of Resolution: See Page 31

7. Non-Collusion Affidavit: See page 32

8. Drug Free Workplace Programs Addendum; See Page 33

9. EEO/Nondiscrimination Addendum See Page 36

### GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions will be a part of any contract awarded under this RFP and must be included in any contract resulting from a Statement of Work Solicitation.

### PART ONE: PERFORMANCE AND PAYMENT

**Statement of Work.** The selected offeror's proposal (the "Proposal") and the UCCOG's Request for Proposals (the "RFP"), any solicitations for Statements of Work ("Statement of Work Solicitations"), any responses from those Solicitations ("Responses"), and any Statement of Work resulting from a Statement of Work Solicitation and Response ("Project Statement of Work") that is awarded to a pre-qualified contractor (a "Contractor") which are collectively referred to as the "RFP Documents," are a part of this contract (the "Contract") and describe the work (the "Work") the Contractor must do and any materials

the Contractor must deliver (the "Deliverables") under this Contract. The Contractor must do the Work in a professional, timely, and efficient manner and must provide the Deliverables in a proper fashion. The Contractor also must furnish its own support staff necessary for the satisfactory performance of the Work.

**NO PROJECT STATEMENT OF WORK WILL BE EFFECTIVE UNLESS IT HAS BEEN SIGNED BY AN DULY AUTHROIZED REPRESENTATIVE OF THE MEMBER OF THE UCCOG INITIATING THE SOW.**

The Contractor must consult with the appropriate UCCOG Member (the Member) representatives and others necessary to ensure a thorough understanding of the Work and satisfactory performance. The Member may give instructions to or make requests to the Contractor relating to the Work, and the Contractor must comply with those instructions and fulfill those requests in a timely and professional manner. Those instructions and requests will be for the sole purpose of ensuring satisfactory completion of the Work and will not amend or alter the scope of the Work.

**Term.** Unless this Contract is terminated or expires without renewal, it will remain in effect for a period not to exceed two years or until December 31, 2025.

Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to the Work a Member pays for before or after termination or limit the Member's rights in such.

The Contractor must make deliveries, meet milestones, and complete the Work within the times the RFP Documents require. If the Contractor does not meet those default dates, the Contractor will be in, and the UCCOG may terminate this Contract or Member may terminate an applicable Project Statement of Work under the Suspension and Termination Section below.

But the UCCOG or Member also may have certain obligations to meet. Those obligations, if any, are also listed in the RFP Documents. If the UCCOG or Member agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP Documents is due to the UCCOG or Member's failure to meet its own obligations, respectively, in a timely fashion, then the Contractor will not be in default, and the delivery, milestone, and completion dates affected by the UCCOG or Member's failure to perform will be extended by the same amount of time as such delay. The Contractor may not rely on this provision unless the Contractor has in good faith exerted reasonable management skill to avoid an extension and has given the UCCOG or Member meaningful written notice of the State's failure to meet its obligations within five business days of the Contractor's realization that the UCCOG or Member's delay may impact the Work. The Contractor must deliver any such notice to the other party to the contract and title the notice as a "Notice of [Contracting Member] Delay." The notice must identify any delay in detail, as well as the impact the delay has or will have on the Work under the applicable Project Statement of Work. Unless the [Contracting Member] decides, in its sole and exclusive judgment, that an equitable adjustment in the Contractor's Fee is warranted in the case of an extended delay, an extension of the Contractor's time to perform will be the Contractor's exclusive

remedy for the [Contracting Member]'s delay. Should the [Contracting Party] determine that an equitable adjustment in the Contractor's Fee for the applicable Project Statement of Work is warranted, the equitable adjustment will be handled as a Change Order under the Changes Section of this Contract, and the extension of time and equitable adjustment will be the exclusive remedies of the Contractor for the [Contracting Member]'s delay.

The [Contracting Member] seeks a complete solution to what the Work is intended to accomplish, and the Contractor must provide any incidental items omitted in the RFP Documents as part of the Contractor's not-to-exceed fixed price for each Project Statement of Work. All required components and processes for the Work to be complete and useful to the [Contracting Party] are included in the Work and the not-to-exceed fixed price unless the RFP expressly provides otherwise.

**Compensation.** In consideration of the Contractor's promises and satisfactory performance of each Project Statement of Work, the Member will pay the Contractor the amount(s) identified in the Statement of Work Solicitation Documents (the "Fee") for each applicable Scope of Work of the project in the Project Statement of Work. In no event, however, will payments under this Contract exceed the "not-to-exceed" amount in the Statement of Work Solicitation Documents for each Project Statement of Work without the prior, written approval of the Member. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Work or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Work tied to the applicable milestone or period. Payment of the Fee is also contingent on the Contractor delivering a proper invoice and any other documents the RFP Documents require. An invoice must comply with the Contracting Member's then current policies regarding invoices and their submission. The State will notify the Contractor in writing within 15 business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

The Contractor must send all invoices under this Contract to the "bill to" address in the RFP Documents for the applicable Project Statement of Work or in the applicable purchase order.

The State will pay the Contractor interest on any late payment, as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If the State disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the State will notify the Contractor, in writing, stating the grounds for the dispute. The State then may deduct the disputed amount from its payment as a nonexclusive remedy. If the Contractor has committed a material breach, in the sole opinion of the State, the State may also withhold payment otherwise due to the Contractor. Both parties will attempt to resolve any claims of material breach or payment disputes through discussions among the Work Manager, the Contractor's executive responsible for the Work under the applicable Project Statement of Work, the applicable Contract Representative, and the State Contract Management Administrator. The State will consult with the Contractor as early as reasonably possible about the nature of the claim or dispute and the amount of payment affected. When the Contractor has resolved the matter to the State's satisfaction, the

State will pay the disputed amount within 30 business days after the matter is resolved. The State has no obligation to make any disputed payments until the matter is resolved, and the Contractor must continue its performance under this Contract pending resolution of the dispute or claim.

If the State has already paid the Contractor on an invoice but later disputes the amount covered by the invoice, and if the Contractor fails to correct the problem within 30 calendar days after written notice, the Contractor must reimburse the State for that amount at the end of the 30 calendar days as a nonexclusive remedy for the State. On written request from the Contractor, the State will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to the State's facilities and any information the State has regarding the problem. If the RFP Solicitation Documents provide for any retainage under a Project Statement of Work, the State will withhold from each invoice paid the percentage specified in the RFP Documents as retainage. The State will pay the retainage only after the State has accepted all the Work for the applicable Project Statement of Work and then only in accordance with the payment schedule specified in the RFP Documents. The State will withhold all amounts under this section arising from claims or disputes in addition to any retainage specified in the RFP Documents.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the UCCOG. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contract must identify the check as a "Revenue Share" and include the applicable RFP number, total report amount, and reporting period covered.

The Contractor must make each check payable to Union County Council of Governments, and forward it to the following address: 233 W. Sixth Street, Marysville, OH 43040

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the UCCOG. The UCCOG may set off any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

**Employment Taxes.** All people furnished by the Contractor (the "Contractor Personnel") are employees or subcontractors of the Contractor, and none are or will be deemed employees or contractors of the UCCOG or its Members. No Contractor Personnel will be entitled to participate in, claim benefits under, or become an "eligible employee" for purposes of any employee benefit plan of the State by reason of any work done under this Contract. The Contractor will pay all federal, state, local, and other applicable payroll taxes and make the required contributions, withholdings, and deductions imposed or assessed under any provision of any law and measured by wages, salaries, or other remuneration paid by or which may be due from the Contractor to the Contractor Personnel. The Contractor will indemnify, defend, and hold the UCCOG and its Members



harmless from and against all claims, losses, liability, demands, fines, and expense (including court costs, defense costs, and redeemable attorney fees) arising out of or relating to such taxes, withholdings, deductions, and contributions with respect to the Contractor Personnel. The Contractor's indemnity and defense obligations also apply to any claim or assertion of tax liability made by or on behalf of any Contractor Personnel or governmental agency on the basis that any Contractor Personnel are employees or contractors of the UCCOG or its Members, that the UCCOG or any of its Members is the "joint employer" or "co-employer" of any Contractor Personnel, or that any Contractor Personnel are entitled to any employee benefit offered only to eligible regular fulltime or regular part-time employees of the UCCOG or its Members.

**Sales, Use, Excise, and Property Taxes.** The UCCOG and its Members are exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Work, such will be the sole and exclusive responsibility of the Contractor. And the Contractor will pay such taxes, together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or a later time. The UCCOG and its Members will provide documentation of their tax-exempt status.

## **PART TWO: WORK AND CONTRACT ADMINISTRATION**

**Subcontracting.** The Contractor may not enter into subcontracts related to the Work for a Project Statement of Work after award of that Project Statement of Work without written approval from the Contracting Member. But the Contractor will not need the Contracting Member's written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Work. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in the RFP Documents.

The Contracting Member's approval of the use of subcontractors does not mean that the Contracting Member will pay for them. The Contractor will be solely responsible for payment of its subcontractor and any claims of subcontractors for any failure of the Contractor or any of its other subcontractors to meet the performance schedule or performance specifications for the Work in a timely and professional manner. The Contractor must hold the Contracting Member harmless and must indemnify the Contracting Member against any such claims.

The Contractor assumes responsibility for all of the work under an SOW whether it, a subcontractor, or third-party manufacturer produces them in whole or in part. Further, the Contractor will be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Contract. And the Contractor will be fully responsible for any default by a subcontractor, just as if the Contractor itself had defaulted.

If the Contractor uses any subcontractors, each subcontractor must have a written agreement with the Contractor. That written agreement must incorporate this Contract by reference. The agreement also must pass through to the subcontractor all provisions of this Contract that would be fully effective only if they bind both the subcontractor and the

Contractor. Among such provisions are the limitations on the Contractor's remedies, the insurance requirements, record keeping obligations, and audit rights. Some sections of this Contract may limit the need to pass through their requirements to subcontracts to avoid placing cumbersome obligations on minor subcontractors. But this exception is applicable only to sections that expressly provide an exclusion for small-dollar subcontracts. Should the Contractor fail to pass through any provisions of this Contract to one of its subcontractors and the failure damages the State in any way, the Contractor must indemnify the State for the damage.

**Record Keeping.** The Contractor must keep all financial records in accordance with generally accepted accounting principles consistently applied. The Contractor also must file documentation to support each action for each applicable Project Statement of Work issued under this Contract in a manner allowing the documentation to be readily located. And the Contractor must keep all Work-related records and documents at its principal place of business or at its office where the work was performed.

**Audits.** During the term of this Contract and for three years after the payment of the Contractor's Fee, on reasonable notice and during customary business hours, the UCCOG may audit the Contractor's records and other materials that relate to the Work. This audit right also applies to the UCCOG's duly authorized representatives and any person or organization providing financial support for the Work.

**Consent to Examinations.** By execution of this Contract, the Contractor consents to the examinations described in these provisions and consents to such examinations being conducted by the UCCOG or its agent.

The UCCOG may conduct such examinations from time to time during the Term of this Contract and any applicable Project Statement of Work and the consent to the examinations provided by Contractor must be a continuing consent to conduct the examinations periodically in the UCCOG's discretion during the Term of this Contract.

**Right to Terminate as a Result of Audit Findings.** In the event the UCCOG determines that the results of any examination of the Contractor is unsatisfactory per the requirements of the Contract and not remedied within a 90 day period following written notice from the UCCOG, the UCCOG may terminate this Contract and any applicable Project Statement of Work, in part or in full.

If the Contractor fails to satisfy the requirements of the UCCOG with regard to matters not related to items contained in the preceding paragraph, the UCCOG will provide Contractor with notice and an opportunity to cure the failure within forty-five (45) days. If the failure is not cured by Contractor within such forty-five (45) day period, the UCCOG may terminate this Contract without further notice.

**Insurance.** The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

(a) Workers' compensation insurance, as required by Ohio law, and if some of the Work will be done outside Ohio, the laws of the appropriate state(s) where any portion of the

Work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.

(b) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the Contracting Member as an additional insured, as its interest may appear.

The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Per Occurrence Limit
- \$1,000,000 Personal and Advertising Injury Limit
- \$100,000 Fire Legal Liability
- \$10,000 Medical Payments

The policy must be endorsed to provide the Contracting Member with 30-days prior written notice of cancellation or material change to the policy. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

(c) Commercial Automobile Liability insurance with a combined single limit of \$500,000.

(d) Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the Contracting Member with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

The certificate(s) must be in a form that is reasonably satisfactory to the Contracting Member as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A" rating by A.M. Best.

**Suspension and Termination.** The Contracting Member may terminate this Contract or any applicable Project Statement of Work if the Contractor defaults in meeting its obligations under the applicable Project Statement of Work and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. The Contracting Member also may terminate this Contract or Statement of Work if the Contractor violates any law or regulation in doing the Work, or if it appears to the Contracting Member that the Contractor's performance is substantially endangered through no fault of the Contracting Member. In any such case, the termination will be for cause, and the Contracting Member's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 30 calendar days to cure any breach of its obligations under the applicable Project Statement of Work, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice, or if the breach is not one that is curable, the Contracting Member will have the right to terminate this Contract or affected Project Statement of Work immediately on notice to the Contractor. The Contracting Member also may terminate this Contract or affected Project Statement of Work in the case of breaches that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the Contracting Member has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the Contracting Member may terminate this Contract or affected Project Statement of Work on written notice to the Contractor without a cure period if the Contractor again fails to meet any obligation. The three notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 calendar days or for no cure period at all, and those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern. Moreover, the Contracting Member may terminate this Contract with respect to one or more Project Statements of Work for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Work. If a third party is providing funding for the Work, the Contracting Member may also terminate this Contract should that third party fail to release any funds for the Work. The RFP Documents normally identify any third-party source of funds for the Work, but an absence of such in the RFP Documents will not diminish the Contracting Member's rights under this section.

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor must immediately cease all activity on the applicable Project Statement of Work and take all steps necessary to minimize any costs the Contractor will incur related to the affected Project Statement of Work. The Contractor also must immediately prepare a report and deliver it to the Contracting Member. The report must be all-inclusive and must detail the Work completed at the date of termination, the percentage of the Work's completion, any costs incurred in doing the Work to that date, and any Deliverables completed or partially completed but not delivered to the Contracting Member at the time of termination. The Contractor also must deliver all the completed and partially completed Deliverables to the Contracting Member with its report. But if the Contracting Member determines that delivery in that manner would not be in its interest, then the Contracting Member may designate a suitable alternative form of delivery, which the Contractor must honor.

If the Contracting Member terminates this Contract or applicable Project Statement of Work for cause, the Contracting Member will be entitled to cover for the Work by using another Contractor on such commercially reasonable terms as the Contracting Member and the covering contractor may agree. The Contractor will be liable to the Contracting Member for all costs related to covering for the Work within the affected Project Statement of Work to the extent that such costs, when combined with payments already made to the Contractor for the Work before termination, exceed the costs that they would have

incurred under this Contract. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

If the termination is for the convenience of the Contracting Member, the Contractor will be entitled to compensation for any Work that the Contractor has performed under the applicable Project Statement of Work before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount that the Contracting Member determines it owes to the Contractor. The Contracting Member will make that determination based on the lesser of the percentage of the Work completed or the hours of work performed in relation to the estimated total hours required to perform all the Work.

The Contracting Member will have the option of suspending rather than terminating the Work in an applicable Project Statement of Work if the Contracting Member believes that doing so would better serve its interests. In the event of a suspension for the convenience of the Contracting Member, the Contractor will be entitled to receive payment for the work performed under the affected Project Statement of Work before the suspension. In the case of suspension of the Work rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed under an affected Project Statement of Work. If the Contracting Member reinstates the Work after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the Contracting Member resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the Contracting Member from the default or other event giving rise to the suspension.

In the case of a suspension for the Contracting Member's convenience, the Contracting Member will calculate the amount of compensation due to the Contractor for Work performed under the affected Project Statement of Work before the suspension in the same manner as provided in this section for termination for the Contracting Member's convenience. The Contractor will not be entitled to compensation for any other costs associated with a suspension for the Contracting Member's convenience, and the Contracting Member will make no payment under this provision to the Contractor until the Contractor submits a proper invoice. If the Contracting Member decides to allow the Work to continue rather than terminating the affected Project Statement of Work after the suspension, the Contracting Member will not be required to make any payment to the Contractor other than those payments specified in this Contract under the affected Project Statement of Work and in accordance with the payment schedule specified in the affected Project Statement of Work for properly completed Work.

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will prepare a report concerning the Work under the affected Project Statement of Work just as is required by this Section in the

case of termination. After suspension of the Work, the Contractor may not perform any Work under the affected Project Statement of Work without the consent of the Contracting Member and may resume the Work only on written notice from the Contracting Member to do so. In any case of suspension, the Contracting Member retains its right to terminate this Contract or affected Project Statement of Work rather than to continue the suspension or resume the Work. If the suspension is for the convenience of the Contracting Member, then termination of the Contract or affected Project Statement of Work will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

The Contracting Member may not suspend the Work for its convenience more than twice during the term of this Contract or the affected Project Statement of Work, and any suspension for the Contracting Member's convenience may not continue for more than 30 calendar days. If the Contractor does not receive notice to resume or terminate automatically for the Contracting Member's convenience at the end of the 30 calendar day period.

Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and must indemnify the Contracting Member for any liability to them.

Notwithstanding the foregoing, each subcontractor must hold the Contracting Member harmless for any damage caused to them from a suspension or termination. They must look solely to the Contractor for any compensation to which they may be entitled.

**Representatives.** The Contracting Member's representative under this Contract will be the person identified in the SOW Documents for the particular Project Statement of Work or in a subsequent notice to the Contractor as the "Work Representative." The Work Representative for a Project Statement of Work will review all reports the Contractor makes in the performance of the Work under that Project Statement of Work, will conduct all liaison with the Contractor under that Project Statement of Work, and will accept or reject the completed Work under that Project Statement of Work. The Work Representative may delegate his or her responsibilities for individual aspects of the Work to one or more managers, who may act as the Work Representative for those individual portions of the Work.

The Contractor's Work Manager under a Project Statement of Work will be the person identified on the Statement of Work Solicitation Documents as the "Work Manager" for that Project Statement of Work. The Work Manager will be the Contractor's liaison with the Contracting Member under this Contract for that Project Statement of Work. Additionally, the Project Manager will conduct all Work meetings and prepare and submit to the Contract Representative for the applicable Project Statement of Work all reports, plans, and other materials that the RFP Documents require from the Contractor. Either party, upon written notice to the other party, may designate another representative. However, the Contractor may not replace the Work Manager without the approval of the Contracting

Member if that person is identified in the RFP Documents by name or as a key individual on the Work.

**Work Responsibilities.** The Contracting Member will be responsible for providing only those things, if any, expressly identified in the RFP Documents for a Project Statement of Work. If the Contracting Member has agreed to provide facilities or equipment for a Project Statement of Work, the Contractor, by signing the applicable Project Statement of Work, warrants that the Contractor has either inspected the facilities and equipment or has voluntarily waived an inspection and will use the equipment and facilities on an “as is” basis.

The Contractor must assume the lead in the areas of management, design, and development of the Work. The Contractor must coordinate the successful execution of the Work and direct all Work activities on a day-to-day basis, with the advice and consent of the Work Representative. The Contractor will be responsible for all communications regarding the progress of the Work and will discuss with the Work Representative any issues, recommendations, and decisions related to the Work.

If any part of the Work requires installation on the Contracting Member's property, the Contracting Member will provide the Contractor with reasonable access to the installation site for the installation and any site preparation that is needed. After the installation is complete, the Contractor must complete an installation letter and secure the signature of the Work Representative certifying that installation is complete and the Work, or applicable portion of it, is operational. The letter must describe the nature, date, and location of the installation, as well as the date the Work Representative certified the installation as complete and operational.

Unless otherwise provided in the RFP Documents, the Contractor is solely responsible for obtaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or federal agency for the Work and maintaining them throughout the duration of this Contract.

**Changes.** The Contracting Member may make reasonable changes within the general scope of the Work for any Project Statement of Work. The Contracting Member will do so by issuing a written order under this Contract describing the nature of the change (“Change Order”). Additionally, if the Contracting Member provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Work, the Contractor may request a Change Order from the Contracting Member.

The parties will handle such changes as follows: The Contractor will provide pricing to the Contracting Member. The Contracting Member will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change, as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the work. Then within five business days after receiving the Change Order, the Contractor must sign it to signify agreement with it.

If a change causes an increase in the cost of, or the time required for, the performance of the Work under the affected Project Statement of Work, the Contractor must notify the Contracting Member in writing and request an equitable adjustment in its Fee for that Project Statement of Work, the delivery schedule for that Project Statement of Work, or both before the Contractor signs the Change Order. If the Contractor claims an adjustment under this section in connection with a change to the Work not described in a written Change Order, the Contractor must notify the Contracting Member in writing of the claim within five business days after the Contractor is notified of the change and before work on the change begins. Otherwise, the Contractor will have waived the claim. In no event will the Contracting Member be responsible for any increase in the Fee for any Project Statement of Work or revision in any delivery schedule unless the Contracting Member expressly ordered the relevant change in writing and the Contractor has complied with the requirements of this section.

Provided the Contracting Member has complied with the procedure for Change Orders in this section, nothing in this clause will excuse the Contractor from proceeding with performance of the Work, as changed.

The Contractor is responsible for coordinating changes with its subcontractors and adjusting their compensation and performance schedule. The Contracting Member will not pay any subcontractor for the Change Order.

If a subcontractor will perform any work under a Change Order, that work must be included in the Contractor's not-to-exceed amount and calculated in the same manner as the Contractor's equitable adjustment for the portion of the work the Contractor will perform. The Contractor will not receive an overhead percentage for any work a subcontractor will do under a Change Order.

If the RFP Documents provide for the retainage of a portion of the Contractor's Fee for a Project Statement of Work, all equitable adjustments for Change Orders for such a Project Statement of Work also will be subject to the same retainage, which the Contracting Member will pay only on completion and acceptance of the Work under that Project Statement of Work, as provided in the RFP Documents.

**Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it is taking to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.



**Independent Status of the Contractor.** The parties are independent of one another, and the Contractor's Personnel may act only in the capacity of representatives of the Contractor and not as representatives of the Contracting Member. Further, the Contractor's Personnel will not be deemed for any purpose to be employees, representatives, or agents of the Contracting Member. The Contractor assumes full responsibility for the actions of the Contractor's Personnel while they are performing under this Contract and will be solely responsible for paying the Contractor's Personnel (including withholding, and paying income taxes and social security, workers' compensation, disability benefits and the like). The Contractor may not commit, and is not authorized to commit, the Contracting Member in any manner. The Contractor's subcontractors will be considered the agents of the Contractor for purposes of this Contract.

**Publicity.** The Contractor may not advertise or publicize that it is doing business with the Contracting Member or use this Contract or the Contractor's relationship with the Contracting Member as a marketing or sales tool unless the Contracting Member agrees otherwise in writing.

### **PART THREE: REPRESENTATIONS, WARRANTIES, AND LIABILITIES**

**General Warranties.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any material defects; and (2) unless otherwise provided in the RFP Documents, be the work solely of the Contractor.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the Contracting Member regarding conduct on any premises under the Contracting Member's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the Contracting Member; and (5) the Contractor is not subject to any unresolved findings of the Auditor of State under Revised Code Section 9.24 and will not become subject to an unresolved finding that prevents the extension or renewal of this Contract.

The warranties regarding material defects, merchantability, and fitness are one-year warranties. All other warranties will be continuing warranties. If any portion of the Work fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed or must refund the amount of the compensation paid for such portion of the Work. The Contractor also must indemnify the Contracting Member for any direct damages and claims by third parties based on a breach of these warranties.

**GENERAL EXCLUSION OF WARRANTIES. THE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESS WARRANTIES CONTAINED IN THIS CONTRACT.**

**Indemnity for Property Damage and Bodily Injury.** The Contractor must indemnify the Contracting Member for all liability and expense resulting from bodily injury to any person (including injury resulting in death) and damage to tangible or real property arising out of the performance of this Contract, provided that such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the Contracting Member, its employees, other contractors, or agents.

**Limitation of Liability.** Neither party will be liable for any indirect, incidental, or consequential loss or damage of the other party, including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of such damages. Additionally, neither party will be liable to the other for direct or other damages in excess of two times the not-to-exceed fixed price of the Project Statement of Work unless the applicable SOW Solicitation states otherwise. Language will be in each SOW Solicitation generally will be two times the project scope of work amount of the Contract. The Contracting Member may change this based on the nature of the project. The limitations in this paragraph do not apply to any obligation of the Contractor to indemnify the Contracting Member against claims made against it or for damages to the Contracting Member caused by the Contractor's negligence or other tortious conduct. In the event that the SOW Solicitation does not contain a provision, then the Limitation of Liability will be two times the not-to exceed fixed price of the Project Statement of Work.

**PART FOUR: ACCEPTANCE AND MAINTENANCE**

**Acceptance.** There will be no formal acceptance procedure unless the RFP Documents expressly provide otherwise. If the RFP Documents do not provide otherwise, the acceptance procedure will be an informal review by the Work Representative to ensure that the Work as a whole complies with the requirements of this Contract. The Work Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though the Contracting Member will issue a notice of noncompliance if a Deliverable or the Work as a whole does not meet the requirements of this Contract. If the Work Representative issues a letter of noncompliance, then the Contractor will have 30 calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the Work Representative has issued a noncompliance letter, the Work as a whole will not be accepted until the Work Representative issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30 day period, the Work Representative will issue the acceptance letter within 15 calendar days.

If the Work fails to meet the standard of performance after 90 calendar days from the start of the performance period, the Contractor will be in default and will not have a cure period.

In addition to all other remedies the Contracting Member may have under this Contract, the Contracting Member will have the right to request correction or replacement of the relevant portion of the Work.

**Passage of Title.** Title to any equipment and materials will pass to the Contracting Member only on acceptance of the Work. All risk of loss, regardless of the cause, will remain with the Contractor until title to the Work passes to the Contracting Member.

## **PART FIVE: CONSTRUCTION**

**Entire Document.** This Contract is the entire agreement between the parties with respect to its subject matter and supersedes any previous statements or agreements, whether oral or written.

**Binding Effect.** This Contract will be binding upon and inure to the benefit of the respective successors and assigns of the Contracting Member and the Contractor.

**Amendments – Waiver.** No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. 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. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

**Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

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

**Headings.** The headings used herein are for the sole sake of convenience and may not be used to interpret any section.

**Notices.** For any notice under this Contract to be effective, it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract, unless such party has notified the other party, in accordance with the provisions of this section, of a new mailing address. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally.

**Continuing Obligations.** The terms of this Contract will survive the termination or expiration of the time for completion of Work and the time for meeting any final payment of compensation, except where such creates an absurdity.

**Time.** Unless otherwise expressly provided, any reference in this document to a number of days for an action or event to occur means calendar days, and any reference to a time of the day, such as 5:00 p.m., is a reference to the local time in Columbus, Ohio.

## **PART SIX: LAW AND COURTS**

**Compliance with Law.** The Contractor must comply with all applicable federal, state, and local laws while performing under this Contract.

**Drug-Free Workplace.** The Contractor must comply with all applicable state and federal laws regarding keeping a drug-free workplace. The Contractor must make a good faith effort to ensure that all the Contractor's Personnel, while working on Contracting Member property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

**Conflicts of Interest.** None of the Contractor's Personnel may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor may not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Work to acquire an interest in anything or any entity under the Contractor's control, if such an interest would conflict with that official's or employee's duties. The Contractor must disclose to the Contracting Member knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. And the Contractor must take steps to ensure that such a person does not participate in any action affecting the work under this Contract. But this will not apply when the Contracting Member has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

**Ohio Ethics Law and Limits on Political Contributions.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor also certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

**Security & Safety Rules.** When on any property owned or controlled by the Contracting Member, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

**Unresolved Finding for Recovery.** If the Contractor was subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on the date the parties sign this Contract, the Contract is void. Further, if the Contractor is subject to an unresolved finding of the Auditor of State under Revised Code Section 9.24 on any date on which the parties renew or extend this Contract, the renewal or extension will be void.

**Equal Employment Opportunity.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>.

**Injunctive Relief.** Nothing in this Contract is intended to limit the Contracting Member's right to injunctive relief if such is necessary to protect its interests or to keep it whole.

**Assignment.** The Contractor may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of the Contracting Member. The Contracting Member is not obligated to provide its consent to any proposed assignment.

**Governing Law.** This Contract will be governed by the laws of Ohio, and venue for any disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

**Confidentiality Agreements.** When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the Contracting Member, in its sole discretion, deems sensitive, the Contracting Member may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

**Typical Form**

**BID GUARANTY AND CONTRACT BOND**

(SECTION 153.571 Ohio Revised Code)

KNOW BY THESE PRESENTS, that we, the undersigned,

(Name)

(Address)

as principal, and, as sureties, are hereby held and firmly bound unto (Owner), as obligee, in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on to undertake the project known as:

**“HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities Project”**

The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate proposals made by the principal on the date referred to above to the obligee, which are accepted the obligee. In no case shall the penal sum exceed the amount

of: \_\_\_\_\_Dollars (\$ ).

(IF THE FOREGOING BLANK IS NOT FILLED IN, THE PENAL SUM WILL BE THE FULL AMOUNT OF THE PRINCIPAL'S BID, INCLUDING ALTERNATIVES. ALTERNATIVELY, IF THE BLANK IS FILLED IN, THE AMOUNT STATED MUST NOT BE LESS THAN THE FULL AMOUNT OF THE BID INCLUDING

ALTERNATES, IN DOLLARS AND CENTS. A PERCENTAGE IS NOT ACCEPTABLE.)

For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this day of , 20\_\_\_\_,

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid \_\_\_\_\_.

NOW, THEREFORE, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of materials; and in the event the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the

contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten (10) days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein;

Now also, if the said principal shall well and faithful do and perform the things agreed by the contract to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, material, men, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material, man, or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in not event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefore shall in any way effect the obligations of said surety on its bond.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

SURETY AGENT'S

PRINCIPAL: \_\_\_\_\_ BY: \_\_\_\_\_  
 (Attorney-in-Fact) (Seal)

BY: \_\_\_\_\_  
 (Seal) SURETY COMPANY ADDRESS:

TITLE: \_\_\_\_\_  
 Agency Name

ADDRESS: \_\_\_\_\_  
 Street

\_\_\_\_\_  
 City, State Zip

\_\_\_\_\_  
 City, State Zip

**Typical**  
**CERTIFICATION OF PERSONAL PROPERTY TAX**

STATE OF OHIO

COUNTY OF \_\_\_\_\_

Before me, a Notary Public, in and for said county and State, personally appeared \_\_\_\_\_, who being first duly sworn that he/she is the owner or officer of which having been awarded a contract by \_\_\_\_\_ for \_\_\_\_\_ hereby states that \_\_\_\_\_ was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which \_\_\_\_\_ has territory and that \_\_\_\_\_ was not charged with delinquent personal property taxes on any such tax list, or that attached hereto and incorporated herein is a list of all delinquent personal property taxes charged against \_\_\_\_\_.

In consideration of the award of the above contract, the above statement is incorporated in said contract as a covenant of the undersigned.

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Signature)

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

This Certification is in compliance with Ohio Revised Code Section 5719.042, which requires a certification of delinquent personal property taxes by any successful bidder prior to the execution of any contract of a taxing district let by competitive bid and in the event there are any due and unpaid delinquent taxes, a copy of this statement shall be transmitted by the fiscal officer to the County Treasurer within 30 days of the date it is submitted.



**AFFIDAVIT**

(To be filled in and executed if the Contractor is a Corporation)

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_ ) S.S.

\_\_\_\_\_, being sworn, deposes and says that he is Secretary of \_\_\_\_\_ a corporation organized and existing under an by virtue of the laws of the State of \_\_\_\_\_, corporation charter/registration # \_\_\_\_\_, and having its principal office at \_\_\_\_\_, \_\_\_\_\_, County, \_\_\_\_\_ (number and street) (city) \_\_\_\_\_ (name of county) \_\_\_\_\_. (state)

Affiant further says that he is familiar with the records, minute books and by-laws of \_\_\_\_\_. Affiant further says \_\_\_\_\_ (name of corporation) that \_\_\_\_\_ of the \_\_\_\_\_ (Name) \_\_\_\_\_ (Title)

Corporation is duly authorized to sign the Contract for the construction of \_\_\_\_\_ for said corporation by virtue of \_\_\_\_\_ (state whether a provision of by-laws or a resolution of the Board of Directors)

\_\_\_\_\_. (If by a resolution, give date of adoption.)

\_\_\_\_\_  
(Secretary of Corporation)

Sworn to before me and subscribed in my presence this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_, County

**NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_

County of \_\_\_\_\_

**RFP - HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities on and Indefinite Delivery/Indefinite Quantity Basis** Proposer ,

\_\_\_\_\_ being first duly sworn,

deposes and says that he is \_\_\_\_\_ (sole owner, a partner, president, secretary, etc.) of \_\_\_\_\_, the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, associate, organization or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that any one shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder, or to secure any advantage against the public body awarding the contract or any one interested in the proposed contract; that all statements contained in such bid are true; and further, that said bidder has not, directly or indirectly, submitted his bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

SEAL

\_\_\_\_\_  
Notary Public

## DRUG FREE WORKPLACE PROGRAMS ADDENDUM

The contractor shall be enrolled in and be in good standing in the drug-free workplace program of the bureau of workers' compensation or a comparable program approved by the bureau that requires an employer to do all of the following:

(a.) Develop, implement, and provide to all employees a written substance use policy that conveys full and fair disclosure of the employer's expectations that no employee be at work with alcohol or drugs in the employee's system, and specifies the consequences for violating the policy.

(b.) Conduct drug and alcohol tests on employees in accordance with division (B)(2)(c) of this section and under the following conditions:

- (i) Prior to an individual's employment or during an employee's probationary period for employment, which shall not exceed one hundred twenty (120) days after the probationary period begins;
- (ii) At random intervals while an employee provides labor or onsite supervision of labor for a public improvement contract. The employer shall use the neutral selection procedures required by the United States Department of Transportation to determine which employees to test and when to test those employees.
- (iii) After an accident at the site where labor is being performed pursuant to a public improvement contract. For purposes of this division, "accident" has the meaning established in rules the administrator of workers' compensation adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on the effective date of this section.
- (iv) When the employer or a construction manager has reasonable suspicion that prior to an accident an employee may be in violation of the employer's written substance use policy. For purpose of this division, "reasonable suspicion" has the meaning established in rules the administrator adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on the effective date of this section.
- (v) Prior to an employee returning to a work site to provide labor for a public improvement contract after the employee tested positive for drugs or alcohol, and again after the employee returns to that site to provide labor under that contract, as required by either the employer, the construction manager, or conditions in the contract.

(c.) Use the following types of test when conducting a test on an employee under the conditions described in division (B)(2)(b) of this section:

(i) Drug and alcohol testing that uses the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program; (ii) Testing to determine the concentration of alcohol on an employee's breath is equal to or in excess of the level specified in division (A)(1)(d) or (h) of section 4511.19 of the Revised Code, which is obtained through an evidentiary breath test conducted by a breath alcohol technician using breath testing equipment that meets standards established by the United States Department of Transportation, or, if such technician and equipment are unavailable, a blood test may be used to determine whether the concentration of alcohol in an employee's blood is equal to or in excess of the level specified in division (A)(1)(b) or (f) or section 4511.19 of the Revised Code.

(d.) Require all employees to receive at least one hour of training that increases awareness of and attempts to deter substance abuse and supplies information about employee assistance to deal with substance abuse problems, and require all supervisors to receive one additional hour of training in skill building to teach a supervisor how to observe and document employee behavior and intervene when reasonable suspicion exists of substance use;

(e.) Require all supervisors and employees to receive the training described in division (B)(2)(d) of this section before work for a public improvement contract commences during the term of a public improvement contract;

(f.) Require that the training described in division (B)(2)(d) of this section be provided using material prepared by an individual who has credentials or experience in substance abuse training;

(g.) Assist employees by providing, at a minimum, at list of community resources from which an employee may obtain help with substance abuse problems, except that this requirement does not preclude an employer from having a policy that allows an employer to terminate an employee's employment the first time the employee test positive for drugs or alcohol or if an employee refuses to be tested for drugs, alcohol or both. A contracting authority shall include all the following statements in the public improvement contract entered into between the contracting authority and a contractor for the public improvement:

(1) "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensations' Drug-Free Workplace Program or a comparable program approved by the bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."

(2) "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior

to a lower-tier subcontractor providing labor at the project site of the public improvements.”

- (3) “Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers’ Compensation’s Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach.”
- (4) “Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers’ Compensation’s Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach.”

## **EEO/NONDISCRIMINATION ADDENDUM**

The Contractor agrees to both of the following:

(A) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the work to which the employment relates;

(B) That no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color. In the event that there is any breach of the provisions against discrimination set forth above, there shall be a forfeiture, pursuant to R.C. 153.60, as follows:

That there shall be deducted from the amount payable to the contractor by the state or by any township, county, or municipal corporation thereof, under this contract, a forfeiture of twenty-five dollars for each person who is discriminated against or intimidated in violation of this contract;

That the contract shall be canceled or terminated by the state or by any township, county, or municipal corporation thereof, and all money to become due hereunder may be forfeited, for a second or subsequent violation of the terms of this section of the contract.