

**Ohio Department of Health
Request for Proposals
PREV-30050**

Notice: This RFP is not an offer or a contract. Bidder's written response to this RFP offering shall be considered as a formal offer to provide the services requested in this RFP.

Ohio Department of Health

**Reducing Secondhand Smoke Exposure and
Cessation Promotion Media Campaign**

**Ohio Department of Health
Bureau of Health Promotion and Risk Reduction
246 North High Street, 8th floor
Columbus, Ohio 43215
Phone: (614) 466-2144**

Reducing Secondhand Smoke Exposure & Cessation Promotion Media Campaign

Table of Contents

- I. Introduction**
 - A. Project Background**
 - B. Qualified Contractor**
 - C. Contract Award and Duration**

- II. Requirements of the Contractor and Requirements of the Project**
 - A. General Requirements of the Contractor**
 - B. Requirements of the Project**

- III. Proposal Format**
 - A. Proposal Cover Sheet**
 - B. Table of Contents**
 - C. Technical Proposal**
 - 1. Profile of the Contractor**
 - 2. Project Implementation**
 - 3. Required Forms and Statements**
 - 4. W-9 Form (Attachment D)**
 - 5. DMA Form (Attachment E)**
 - d. Cost Proposal**

- IV. Scoring of Proposals**
 - Total Points Available**

- V. Submission of Proposals**
 - Submission Deadline and Inquiries

- VI. Protest Procedures**

- VII. Other Conditions**

Attachment A – Sample Contract

Attachment B – Attestation Form (to be signed and submitted with bid)

Attachment C – Ohio Department of Health District Divisions Map

Attachment D – W-9 Form

Attachment E – DMA Form

Reducing Secondhand Smoke Exposure & Cessation Promotion Media Campaign

I. Introduction

Tobacco use is the nation's leading preventable cause of premature death (National Institute of Health [NIH], 2006). Tobacco use accounts for one in every five deaths in the United States (NIH, 2006). Currently, 21 percent of adults and 22 percent of high school students smoke cigarettes in the United States (NIH, 2006). Over the period 1995 through 1999, the estimated costs for providing direct medical care to smokers totaled \$75.5 billion for adults and there was an estimated \$81.9 billion associated with lost productivity as a result of tobacco-use (NIH, 2006). The estimated prevalence of current smokers in Ohio is 22.4% in comparison to 20.5% for the United States (Ohio Department of Health [ODH], 2006).

A. Project Background

The purpose of this media campaign is to reach at risk populations with secondhand smoke prevention and cessation promotion messages with the primary goal of eliminating exposure to secondhand smoke in enclosed areas of the home and automobile, promoting cessation among smokers, and decreasing diseases associated with tobacco smoke exposure.

The Ohio Department of Health's Tobacco Risk Reduction Program will contract with a media buyer to identify radio and television stations to reach the greatest amount of households and individuals within our priority populations' target group (100% of African American, Hispanic-Latino and Appalachian populations earning at or below \$30,000 per year, and with less than a high school diploma) geographical area of Northwest and Southeast Ohio (regional map, Attachment C).

Although 15 percent of Ohio's population consists of communities of color, their adult smoking prevalence rates within and across these communities were generally higher than their Caucasian counterparts (see Tables 1 and 2). In 2005 Ohio ranked 16th in comparison to other states with regard to adult smoking prevalence (ODH 2006). According to Centers for Disease Control and Prevention (CDC) (2005) estimates for 2003, the smoking prevalence rate for African Americans was 25.1%, American Indians/Alaskan Natives was 43.2%, Asian American/Pacific Islander was 10.9%, and Hispanics/Latinos was 21.8%. Table 1 below provides information on the estimated smoking prevalence by race and ethnicity in 2003.

Race/Ethnicity	Population	Estimated Smoking Rates	Number of Estimated Smokers
African American/Black	1,305,611	25.1%	327,708
American Indian/Alaska Native	22,706	43.2%	9,809
Asian American	136,238	10.9%	14,850
Caucasian	9,650,169	22.5%	2,171,288
Hispanic/Latino	215,710	21.8%	47,025

Sources: U.S. Census Bureau, Census 2000 Summary File 1, ODH 2006, and CDC 2005.

Approximately 22.2% of the African American adult population were current smokers, 20.4% of the Hispanics/Latinos were current smokers as compared to 22.5% of the Caucasian population in Ohio (ODH, 2006).¹ However, limited studies in Ohio reveal high smoking prevalence among Vietnamese (23%) and Korean (22%) adult males (Adhikari 2002; Katsuyama 2005). Table 2 below lists the estimated smoking prevalence rates of various populations in Ohio. Sources: ODH, 2006; CDC, 2005; Adhikari, 2002; Katsuyama, 2005; Ohio Comprehensive Tobacco Use Prevention Strategic Plan, 2004-2008.

Population	Estimated Smoking Prevalence
<i>Uninsured²</i>	55%
<i>Medicaid³</i>	50.1%
<i>Unemployed Caucasians</i>	45.2%
<i>American Indians/Alaskan Natives⁴</i>	43.2%
<i>Caucasians with less than a High School Diploma</i>	42.4%
<i>Individual earning less than \$15,000</i>	35.9%
<i>African American Males ages 35-54 years</i>	30.7%
<i>African American Females ages 35-54 years</i>	30.4%
<i>Vietnamese⁵</i>	23%
<i>Caucasians</i>	22.5%
<i>African Americans</i>	22.2%
<i>Koreans⁶</i>	22%
<i>Asian Americans⁷</i>	10.9%

¹ CDC Tobacco Control Highlights 2005 data were used to estimate tobacco prevalence rates for American Indians/Alaskan Natives, Hispanic/Latino Americans and Asian Americans in 2003 for the state of Ohio since these data were not available from BRFSS 2004 or 2005.

² Ohio Comprehensive Tobacco Use Prevention Strategic Plan 2004 – 2008:2006 Update. The year for this statistic is not reported.

³ Ibid.

⁴ State level data were not available for American Indians/Alaskan Natives. This is a national estimate obtained from 2003 data (CDC, 2005).

⁵ This data was collected 2000-2001 and is not based on a random sample; therefore it cannot be generalized to the population (Adhikari, 2002).

⁶ This data was collected in 2004 and is not based on a random sample, therefore it cannot be generalized to the population (Katsuyama, 2005).

When gender, age, income, employment status, and education of the race/ethnicity are taken into account, some of the populations with the largest estimated smoking rates in Ohio include: uninsured individuals, Medicaid participants, unemployed Caucasians, American Indians/Alaskan Natives, Caucasians with less than a high school diploma, African American males and African American females ages 35-54 years old. (ODH, 2006; Ohio Comprehensive Tobacco Use Prevention Strategic Plan, 2004-2008).

Other areas of concern are: a) Children living with parents who smoke are more likely to develop ear infections, bronchitis, have asthma, or have asthma attacks enhanced by secondhand smoke exposure; b) Within the Hispanic-Latino community, they are more likely to have someone smoke cigarettes, cigars or pipes anywhere inside their home; c) Even though African Americans smoke fewer cigarettes and begin smoking later in life, their lung cancer incidence and mortality rates are exceedingly high; and d) Ohio Appalachian counties have higher lung cancer incidence and mortality rates than other counties in Ohio.

B. Qualified Contractors

The successful bidder shall meet the requirements in Section II. Bidders must respond to all items listed in the Section II, Requirements of the Contractor and Requirements of the Project. Failure to materially respond to all the items listed in the Section II, Requirements of the Contractor and Requirements of the Project will result in disqualification for this Request for Proposals. If the bidder has any exceptions to the requirements of the contract or terms or agreement of the Request for Proposal, the exceptions must be included in the contractor's response to the Request for Proposal

C. Contract Award and Duration

A Contract will be awarded contingent upon approval by the Director of Health. The successful bidder will contract with ODH to perform the deliverables as set forth in the RFP. The contract shall be in effect for a period of approximately two (2) months, commencing on or about April 23, 2007 through June 29, 2007.

II. Requirements of the Contractor and Requirements of the Project

The contractor must, at a minimum meet all of the following contractor and project requirements.

A. Requirements of the Contractor

Bidders must submit documentation evidencing all of the following:

1. Provide two agency references for which you have done previous media campaign work to demonstrate an understanding of the demographic characteristics of the Ohio media

⁷ State level data were not available for American Indians/Alaskan Natives. This is a national estimate obtained from 2003 data (CDC, 2005).

market including peak hours and most popular radio and television formats/stations for the at risk population described above in the northwestern and southeastern areas of Ohio.

2. Demonstrate the ability to develop a detailed media buy plan for a similar target group inclusive of the number of people who will hear and see our ads in a four (4) week period and frequency of hits (i.e., the number of times the average person or household hears the ad during that four week period). Also, provide an approximate amount of paid versus value-added spots from radio and television stations. Provide a sample plan.
3. The designation of a project manager to consult with the Ohio Department of Health contract managers Eric Greene and Tracy Clopton to confirm and finalize the media buy plan. Include the project manager's resume.
4. Demonstrate the ability to develop and submit an evaluation plan that will summarize the impact of the media buy on the defined target groups within the chosen geographical area. Provide a sample.
5. Demonstrate experience in the determination of the appropriate mode of media outlet types and mode of transmission of the radio and television spots (i. e. mp3, CD etc.) to air on the radio and television stations and appropriate tag line.

B. Requirements of the Project

The successful bidder shall perform all of the following activities:

1. Use the demographic characteristics provided by ODH and other resources as may be approved by ODH of the Ohio media market including peak hours and most popular radio and television formats and stations for the at risk population described above in the northwestern and southeastern areas of Ohio.
2. Develop a detailed media buy plan to maximize exposure to the target groups. The plan will all inclusive of the number of people who will hear and see the ODH ads in a four (4) week period of May 29, 2007 to June 29, 2007, and frequency of hits (i.e., the number of times the average person or household hears the ad during that four week period). Clearly define the population demographic to be reached through each vendor chosen based upon our requirement of (100% of African American, Hispanic-Latino and Appalachian populations earning at or below \$30,000 per year, and with less than a high school diploma) geographical area of Northwest and Southeast Ohio (regional map attached).
3. Consult with the Ohio Department of Health contract managers Eric Greene and Tracy Clopton to confirm and finalize the media buy plan prior to implementation starting on

May 29, 2007 and commencing June 29, 2007. Media buy efforts should begin on or about April 23, 2007.

4. Develop and submit an evaluation that will summarize the impact of the media buy on the target group in the chosen geographical areas at the time of invoice.
5. Work with the Ohio Department of Health to preliminarily determine the appropriate mode of media transmission of the radio and television spots (i. e. mp3, CD etc.) to air on the radio and television stations and appropriate tag line.

III. Proposal Format

Proposals must be submitted with an original and three copies containing the following sections, separated by tabbed and labeled dividers:

A. Proposal Cover Sheet

1. Project Manager Name, address and federal tax identification number.
2. Name and title of Project Manager and that person's telephone and fax numbers and e-mail address

B. Table of Contents

C. Technical Proposal (must include the following items)

1. Profile of the Contractor (maximum of two pages, excluding resume); name of contact person at
 - a. A detailed broadcast media plan indicating the demographic and lifestyle characteristics of their listeners.
 - b. A description of how the requirements specific to this project will be implemented including the number of radio and television stations from which you intend to buy airtime.
 - c.
2. Project Implementation (maximum of two pages, excluding letter (s) of commitment)
 - a. A description of how the requirements of the project will be implemented; (see page 4, Section II (A) Requirements of the Contractor).
3. A signed attestation statement (**Attachment B**) indicating a commitment to execute a contract within 14 days after the contractor is notified of selection. Failure of the selected contractor to execute a contract with ODH within this time frame shall be grounds for ODH to cancel the award of the contract to the selected contractor, select another contractor, and/or re-open the bidding process.
4. W-9 Form (Taxpayer Identification and Certification) (Attachment D)
5. Declaration Regarding Material Assistance (DMA) form (Attachment E)

D. Cost Proposal

1. Provide a cost breakdown and narrative of all costs reflected in the proposal to meet Requirements of the Project in Section II as follows:
 - a) Indicate the costs per million (CPM to be charged to ODH for the development and implementation of the media buy plan.
 - b) The Bidder understands that the fees or rates charged for the work specified in Section II above includes the costs for the Bidder and its employees to perform the work at the location or locations specified above.
 - c) Provide a proposal delineating the number of 60 second radio spots to be aired, a unit price for each spot, and an extended or total price. The total amount available inclusive of the bidder's fees is \$45,000. If the bidder intends to include value added radio spots as part of the proposal, provide an adjusted unit price reflecting the savings. The contract will be awarded to the lowest responsive responsible bidder.

IV. Scoring of proposal

All proposals will be evaluated and scored by a selection committee. The technical and cost portions of the proposal will be reviewed and scored according to the following criteria; maximum points for each category are listed below:

<u>Total points available:</u>	100
• Capability to reach households (i.e. CPM) in at risk populations.	20
• Demonstrate an understanding of the demographic characteristics of the Ohio media market and connect this to our at risk population in the northwestern and southeastern areas of Ohio.	15
• Develop a detailed media buy plan with 1:1 match from radio and television stations with understanding of need to reach at risk population in geographic area defined.	25
• Willingness to consult with the Ohio Department of Health contract managers Eric Greene and Tracy Clopton to confirm and finalize the media buy plan prior to implementation; including to determine appropriate mode of media to use for vendors.	15
• Develop and submit evaluation plan summarizing the impact of the media buy on our defined at risk population within our chosen geographical area.	10
• Lowest unit price resulting in the greatest number of media spots to be aired for not more than \$45,000.	15

Based on the evaluation of the proposals, the selection committee will forward a recommendation to the Director of Health. The Director will make a selection and his decision is

final. Lowest unit price resulting in the greatest number of media spots to be aired for not more than \$45,000.

V. Submission of Proposals

Submission Deadline and Inquiries

To be considered, an original and three copies of the proposal must arrive at ODH no later than May 4, 2007. No FAX proposals will be accepted. Proposals may be mailed or delivered to:

Ohio Department of Health
Office of Financial Affairs
Contract Unit
246 N. High Street
Columbus, Ohio 43215
Attn: Paul Maragos

Inquiries should be directed in writing to Paul Maragos at the above address or by e-mail to Paul.Maragos@odh.ohio.gov. All questions must be submitted by April 20, 2007. Answers to the questions will be posted to the Ohio Department of Health website (<http://www.odh.ohio.gov/about/funding.aspx>) by April 28, 2007. Telephone inquiries will not be accepted.

VI. Protest Procedure

Any potential, or actual, bidder objecting to an award of a contract resulting from the issuance of this RFP may file a protest of the award of the contract, or any other matter relating to the process of soliciting the proposals. Such a protest must comply with the following guidelines:

1. A protest may be filed by a prospective or actual bidder objecting to the award of a contract resulting from this RFP. The protest shall be in writing and shall contain the following information:

- a. The name, address, and telephone number of the protestor.
- b. The name and number of the RFP being protested.
- c. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents.
- d. A request for a ruling by ODH.
- e. A statement as to the form of relief requested from ODH.

f. Any other information the protestor believes to be essential to the determination of the factual and legal questions at issue in the written protest.

2. A protest shall be considered timely by ODH, if ODH's Office of General Counsel received it, within the following periods:

a. A protest based upon alleged improprieties in the issuance of the RFP or any other event preceding the closing date for receipt of proposals which are apparent or should be apparent prior to the closing date for receipt of proposals shall be filed no later than 4:30 p.m. the closing date for receipt of proposals, which is May 4, 2007.

b. If the protest relates to the announced intent to award a contract, the protest shall be filed no later than 3:00 pm of the tenth (10th) business day after the issuance of the Letter of Intent to Award the contract.

3. An untimely protest may be considered if ODH determines that the protest raises issues significant to ODH's procurement system. An untimely protest is one received by ODH's Office of General Counsel after the time period set forth in paragraph 2 of this section.

4. All protests must be filed with the following:

Chief Legal Counsel
Ohio Department of Health
246 North High Street, 7th floor
Columbus, Ohio 43215

5. When a timely protest is filed, a contract award shall not proceed until a decision on the protest is issued or the matter is otherwise resolved, unless the Director of ODH determines that a delay will severely disadvantage ODH. The bidder(s) who would have been awarded the contract shall be notified of the receipt of the protest.

6. ODH shall issue written decisions on all timely protests and shall notify any bidder who filed an untimely protest as to whether or not the protest will be considered.

VII. Other Conditions

A. ODH is under no obligation to pay any costs incurred in the preparation of any proposal.

B. ODH reserves the right to reject any and all proposals where the contractor fails to meet the terms and conditions of the RFP, including but not limited to, standards, specifications and requirements, or where the response to the RFP contains significant inconsistencies and/or inaccuracies.

C. ODH reserves the right to reject, in whole or in part, any and all proposals which ODH, taking into consideration factors including but not limited to price and the results of the

evaluation process, has determined that award of a contract would not be in the best interest of ODH or the state.

- D. ODH may cancel and/or re-issue the RFP, in whole or in part, when the services offered are not in compliance with the requirements, specifications, and terms and conditions set forth in the RFP; pricing offered is considered to be excessive in comparison with existing market conditions or exceeds the available funds of ODH; or it is determined that award of a contract would not be in the best interest of ODH/and or the state.
- E. ODH reserves the right to waive minor defects and to provide contractors with the opportunity to correct material defects when no prejudice to the rights of other contractors or to the public will result. Contractors shall be offered fair and equal treatment regarding any clarification and/or correction.
- F. ODH reserves the right to amend or withdraw the RFP any time prior to the award of a contract. The contractor may withdraw a response to the RFP any time prior to the award of a contract.
- G. All products, which result from the proposed contractual agreement, will be the sole property of ODH.
- H. All bids will be considered firm and in the event a contract ensues as a result of this solicitation, the contractor selected will be required to fulfill the contractual obligations at the amount in the cost proposal.
- I. In the event a contract ensues as a result of this solicitation, the contractor selected will be required to sign a statement protecting the confidentiality of all individuals served.
- J. Pursuant to Section 149.43 of the Ohio Revised Code, the proposal may be considered a public record and be released upon request but not before the closing of bids pursuant to section 125.071(C) of the Ohio Revised Code.
- K. ODH may, from time to time as it deems appropriate, communicate specific instructions and requests to the contractor concerning the performance of the work described in the RFP and/or the contract. Upon such notice and within ten (10) days after receipt of instructions, the CONTRACTOR shall comply with such instructions and fulfill such requests to the satisfaction of ODH. It is expressly understood by ODH and the CONTRACTOR that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in the RFP and/or contract or any part thereof. All such instructions and requests shall be communicated to the CONTRACTOR by ODH' designated representative.
- L. The state reserves the right not to award a contract under this RFP.

**ATTACHMENT A
Sample Contract**

**PERSONAL SERVICE CONTRACT
By and Between
THE OHIO DEPARTMENT OF HEALTH
and
[NAME OF CONTRACTOR]**

PREAMBLE

The Ohio Department of Health (hereinafter referred to as "**ODH**"), whose address is 246 North High Street, Columbus, Ohio 43215, and [Name of Contractor] (hereinafter referred to as the "**CONTRACTOR**"), whose address is [Address of Contractor], hereby enter into this contract. For the purposes of this contract, the term "party" means **ODH** and the **CONTRACTOR** respectively and "parties" means **ODH** and **CONTRACTOR** collectively. **ODH** and the **CONTRACTOR**, in consideration of the mutual promises expressed below and intending to be legally bound, agree to the following provisions.

**ARTICLE I
Scope of Work and Deliverables**

- A. The **CONTRACTOR** shall provide the services and perform the work as specified in the following:
1. As necessary, report to **ODH's** contract manager, [Name of contract manager], the Ohio Department of Health, 246 North High Street, Columbus, Ohio 43215 (Telephone Number (614) [Contract manager phone number]; FAX Number (614) [Contract manager fax number]).
 - 2.
 - 3.
 - 4.
 - 5.
 - 6.
- B. The **CONTRACTOR** shall furnish its own support staff and services as necessary for the satisfactory performance of the work described in **ARTICLE I, Section A**, above. Unless otherwise specified in this contract, **ODH** will not provide any staff, services, or material to the **CONTRACTOR** for the purpose of assisting the **CONTRACTOR** in the performance of this contract.
- C. **ODH** may, from time to time as it deems appropriate, communicate specific instructions and requests to the **CONTRACTOR** concerning the performance of the work described in this contract. Upon such notice and within ten (10) days after receipt of instructions, the **CONTRACTOR** shall comply with such instructions and fulfill such requests to the satisfaction of **ODH**. It is expressly understood by the parties that these instructions and requests are for the sole purpose of ensuring satisfactory

completion of the work described in this contract. They are not intended to amend or alter this contract or any part thereof. All such instructions and requests shall be communicated to the **CONTRACTOR** by the **ODH** contract manager.

- D. The **CONTRACTOR** shall consult with the **ODH** contract manager as necessary to assure mutual understanding of the work to be performed and the satisfactory completion thereof.

ARTICLE II

Time of Performance

- A. Upon approval by the Director of **ODH** and, if required, the Controlling Board, this contract shall be in effect from [Contract start date] or upon execution by both parties, whichever is later, through [Contract end date], unless this contract is suspended or terminated pursuant to **ARTICLE X** prior to the termination date.
- B. It is expressly understood by both **ODH** and the **CONTRACTOR** that this contract shall not be valid and enforceable until the Director of the Office of Budget and Management certifies, pursuant to section 126.07 of the Ohio Revised Code (ORC), that there is a balance in the appropriation not already encumbered to pay obligations resulting from this contract.
- C. The **CONTRACTOR** shall neither perform work nor submit an invoice for payment for work performed under this contract for any time period prior to receipt of written notification from the **ODH** contract manager that the requirements of section 126.07 and, if applicable, section 127.16 of the ORC have been met.
- D. The **CONTRACTOR** shall neither perform work nor submit an invoice for payment for work performed under this contract for any time period after the termination date set forth in **ARTICLE II, Section A**, above.

ARTICLE III

Compensation for Services

- A. In consideration of the services provided pursuant to **ARTICLE I** of this contract, **ODH** agrees to pay compensation for services rendered under this contract of \$[Maximum Compensation] It is expressly understood by **ODH** and the **CONTRACTOR** that the terms of this contract limit the total compensation for services, travel and miscellaneous expenses to a maximum of \$[Maximum Compensation] for the contract period set forth in **ARTICLE II**. The **CONTRACTOR** shall monitor the work under this contract and shall not accept an assignment under the contract if it will cause or is reasonably likely to cause the total amount paid under the contract for the contract period specified in **Article II** to exceed the maximum allowable compensation for services. The **CONTRACTOR** hereby waives the interest provisions of section 126.30 of the ORC.
- B. The **CONTRACTOR** understands and the parties agree that the fees or rates charged for the work specified in **ARTICLE I** includes an allocation by the **CONTRACTOR** of the **CONTRACTOR**'s costs to enable the **CONTRACTOR** to perform work at the location(s) specified in **ARTICLE I**. For purposes of this contract, **ODH** shall not separately reimburse **CONTRACTOR** for expenses related to travel.
- C. The **CONTRACTOR** shall invoice **ODH** [Invoice frequency] for services the **CONTRACTOR** provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to **ODH**, ATTN:

Accounts Payable, P.O. Box 118, Columbus, Ohio 43216-0118. **ODH** will reimburse the **CONTRACTOR** within forty-five (45) days of receipt of a valid invoice for the amount of payment due. **ODH** shall return any invalid or incomplete invoice to the **CONTRACTOR** within fifteen (15) days after **ODH** receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this contract shall be submitted by the **CONTRACTOR** no later than thirty (30) days following the termination of the contract.

- D. Subject to the provisions of sections 126.07 and 131.33 of the ORC, which shall at all times govern this contract, **ODH** represents that:
1. It intends to maintain this agreement for the full period set forth herein and has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during such period; and
 2. It will use its best effort to obtain the appropriation of any necessary funds during the term of this agreement.

However, it is understood by the **CONTRACTOR** that the availability of funds is contingent on appropriations made by the Ohio General Assembly and, if applicable, the federal funding source. If the Ohio General Assembly or the federal funding source fails at any time to continue funding **ODH** for the payments due hereunder, this agreement is terminated as of the date funding expires without further obligation of **ODH** or the State of Ohio.

- E. **ODH** will not compensate the **CONTRACTOR** for any work performed prior to receipt of written notification from the **ODH** contract manager that the requirements of section 126.07 and, if applicable, section 127.16 of the ORC have been met as set forth in **ARTICLE II, Sections B and C**. **ODH** will not compensate the **CONTRACTOR** for any work performed after the termination date set forth in **ARTICLE II, Section A**.

ARTICLE IV Independent Contractor

- A. No agency, employment, joint venture or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this agreement. Inasmuch as **ODH** is interested in the **CONTRACTOR's** end product, **ODH** does not control the manner in which the **CONTRACTOR** performs this contract. **ODH** is not liable for the workers' compensation or unemployment compensation payments required by Chapters 4123. and 4141. of the ORC, respectively. In addition, the **CONTRACTOR** assumes responsibility for tax liabilities that result from compensation paid to the **CONTRACTOR** by **ODH**. **ODH** will report any payment made under this contract to the Internal Revenue Service on Form 1099.
- B. No provision contained in this contract shall be construed as entitling the **CONTRACTOR** to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of **ODH** or to become a member of the Public Employees Retirement System (Chapter 145. of the ORC).
- C. The **CONTRACTOR** certifies that all approvals, licenses or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period the **CONTRACTOR** becomes disqualified from conducting business in Ohio, for whatever reason, the **CONTRACTOR** shall immediately notify **ODH** of the disqualification.

ARTICLE V
Conflict of Interest and Ethics Laws

- A. The **CONTRACTOR** hereby covenants that neither the **CONTRACTOR** nor any officer, member or employee of the **CONTRACTOR** has any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this contract.

- B. Neither the **CONTRACTOR** nor any officer, member or employee of the **CONTRACTOR** shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.

- C. The **CONTRACTOR** shall not promise or give to any **ODH** employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. The **CONTRACTOR** shall not solicit an **ODH** employee to violate any **ODH** rule or policy relating to the conduct of contracting parties or to violate sections 102.03, 102.04 or 2921.42 of the ORC.

- D. The **CONTRACTOR** hereby covenants that the **CONTRACTOR** and any officer, member or employee of the **CONTRACTOR** are in compliance with section 102.04 of the ORC and that if the **CONTRACTOR** is required to file a statement pursuant to section 102.04(D)(2) of the ORC, such statement has been filed with the **ODH** General Counsel in addition to any other required filings.

- E. The **CONTRACTOR** hereby certifies compliance with the executive agency lobbying requirements of sections 121.60 to 121.69 of the ORC.

- F. The **CONTRACTOR** hereby certifies and affirms that, as applicable to the **CONTRACTOR**, no party listed in Division (I) or (J) of section 3517.13 of the ORC or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 to the Governor or to his campaign committees. If it is determined that the **CONTRACTOR's** certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, the **CONTRACTOR** shall return to **ODH** all monies paid to the **CONTRACTOR** under this contract. The provisions of this section shall survive the expiration or termination of this contract.

ARTICLE VI
Equal Employment Opportunity

- A. In carrying out this agreement, the **CONTRACTOR** shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, disability, national origin, ancestry, veteran status, or any other factor specified in section 125.111 of the ORC, in the Civil Rights Act of 1964, as amended, or in section 504 of the Rehabilitation Act of 1973, as amended, and in any subsequent legislation pertaining to civil rights.

- B. The **CONTRACTOR** shall incorporate the foregoing requirements of **ARTICLE VI, Section A** in all of its contracts for performance of any of the work prescribed herein, and shall require all of its

subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

ARTICLE VII Records, Documents and Information

All records, documents, writings or other information produced or used by the **CONTRACTOR** in the performance of this contract shall be treated according to the following terms:

- A. All **ODH** information which, under the laws of the State of Ohio, is classified as public or private, will be treated as such by **CONTRACTOR**. Where there is a question as to whether information is public or private, **ODH** shall make the final determination. The **CONTRACTOR** shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. The **CONTRACTOR** agrees to be bound by the same standards of confidentiality that apply to the employees of **ODH** and the State of Ohio. The terms of this section shall be included in any subcontracts executed by the **CONTRACTOR** for work under this contract.
- B. All proprietary information of the **CONTRACTOR** shall be held to be strictly confidential by **ODH**. Proprietary information is information which, if made public, would put the **CONTRACTOR** at a disadvantage in the market place and trade of which the **CONTRACTOR** is a part. The **CONTRACTOR** is responsible for notifying **ODH** of the nature of the information prior to its release to **ODH**. **ODH** reserves the right to require reasonable evidence of the **CONTRACTOR's** assertion of the proprietary nature of any information to be provided.
- C. All records relating to costs, work performed and supporting documentation for invoices submitted to **ODH** by the **CONTRACTOR** shall be retained and made available by the **CONTRACTOR** for audit by the State of Ohio (including, but not limited to, **ODH**, the Auditor of the State of Ohio, the Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this contract. If an audit, litigation, or other action is initiated during this time period, the **CONTRACTOR** shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.

ARTICLE VIII Rights in Deliverables, Data and Copyrights

The Deliverables provided by the **CONTRACTOR** under **ARTICLE I** and any item produced under this contract, including any documents, data, photographs and negatives, electronic reports, records, software, source code, or other media, shall become the property of **ODH** which shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. The **CONTRACTOR** shall not obtain copyright, patent, or other proprietary protection for the Deliverables. The **CONTRACTOR** shall not include in any Deliverable any copyrighted matter, unless the copyright owner gives prior written approval to use such copyrighted matter.

ARTICLE IX Disclosure of Personal Health Information

- A. **CONTRACTOR** hereby agrees that the information provided or made available by **ODH** shall not be used or disclosed other than as permitted or required by the contract or as required by law. **CONTRACTOR** will establish and maintain appropriate safeguards to prevent any use of disclosure

of the information, other than as provided for by this contract [ref. 45 C.F.R.164.504(e)(2)(ii)(A)(B)]. **CONTRACTOR** shall immediately report to **ODH** any discovery of use or disclosure of information not provided for or allowed by the contract.

- B.** **CONTRACTOR** hereby agrees that anytime information is provided or made available to any subcontractor or agent, **CONTRACTOR** must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of information as contained in this contract. **CONTRACTOR** must obtain **ODH** approval prior to entering into such agreements. Further, **CONTRACTOR** agrees to make available and provide right of access to an individual of their protected health information when that protected health information is obtained in the performance of **CONTRACTOR**'s obligations under this contract.

ARTICLE X

Suspension and Termination

- A.** **ODH** may suspend or terminate this contract for any reason thirty (30) days after delivery of written notice to the **CONTRACTOR**. **ODH** may suspend or terminate this contract immediately after delivery of written notice to the **CONTRACTOR** if **ODH**:
1. Discovers any illegal conduct on the part of the **CONTRACTOR**;
 2. Discovers a violation of **ARTICLE V** or **ARTICLE XV**; or
 3. Is subject to a loss of funding as set forth in **ARTICLE III, Section D**.
- B.** The **CONTRACTOR**, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this contract, suspend or terminate any subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as **ODH** may require.
- C.** In the event of suspension or termination under this Article, the **CONTRACTOR** shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by **ODH** based on the rate set forth in **ARTICLE III**, less any funds previously paid by or on behalf of **ODH**. In the case of services for which the **CONTRACTOR** charges a flat rate, compensation shall be based on a reasonable percentage of the total services performed, as determined by **ODH**, less any funds previously paid by or on behalf of **ODH**. **ODH** shall not be liable for any further claims, and the claims submitted by the **CONTRACTOR** shall not exceed the total amount of compensation allowed by this contract.

ARTICLE XI

Breach or Default

- A.** Upon breach or default by the **CONTRACTOR** of any of the provisions, obligations or duties embodied in this contract, **ODH** may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and **ODH** retains the right to exercise all remedies hereinabove mentioned.

- B. If **ODH** or the **CONTRACTOR** fails to perform an obligation or obligations under this contract and thereafter such failure is waived by the other party, such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by **ODH** shall not be effective unless it is in writing and signed by the **ODH** contract manager.

ARTICLE XII **Amendments**

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

ARTICLE XIII **Limitation of Liability**

- A. The **CONTRACTOR** holds **ODH** harmless from any and all liability, suits, losses, judgments, damages, or any other demands arising out of the actions or omissions of the **CONTRACTOR** while performing this contract.
- B. **ODH's** liability for damages, whether in contract or in tort, shall not exceed the total amount of compensation payable to the **CONTRACTOR** under **ARTICLE III** or the amount of direct damages incurred by the **CONTRACTOR**, whichever is less. The **CONTRACTOR's** sole and exclusive remedies for **ODH's** failure to perform under the contract shall be as set forth in this article. In no event shall **ODH** be liable for any indirect or consequential damages, including loss of profit, even if **ODH** knew or should have known of the possibility of such damages.
- C. Neither party is responsible to the other party for nonperformance or delay in performance of the terms of the contract due to acts of God, wars, riots, strikes, or other causes beyond the control of the parties.

ARTICLE XIV **Assignment**

The **CONTRACTOR** shall not assign any interest (including subcontracts) in this contract and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of **ODH**. Any such assignments or subcontracts shall be submitted for **ODH's** review 10 days prior to the desired effective date. Approval by **ODH** shall not be deemed to increase in any manner the total compensation provided for in this contract. Claims for compensation due or to become due the **CONTRACTOR** from **ODH** under this contract may be assigned to a bank, trust company, or other financial institution without **ODH's** approval if notice of any such assignment is promptly furnished in writing to **ODH**.

ARTICLE XV **Drug Free Workplace**

The **CONTRACTOR** shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. The **CONTRACTOR** shall make a good faith effort to ensure that

all employees of the **CONTRACTOR** do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.

ARTICLE XVI
Good Standing

CONTRACTOR affirmatively represents and warrants to **ODH** that it is not subject to a finding for recovery under section 9.24 of the ORC, or that it has taken the appropriate remedial steps required under section 9.24 ORC or otherwise qualifies under that section. **CONTRACTOR** agrees that if this representation and warranty is deemed false, the contract will be void *ab initio* as between the parties to this contract, and any funds paid by **ODH** hereunder shall be immediately repaid to **ODH**, or an action for recovery may be immediately commenced by **ODH** for the recovery of said funds.

ARTICLE XVII
Insurance

CONTRACTOR will provide the following insurance at its own expense:

- A. Workers' Compensation insurance, as required by Ohio law or the laws of any other state where work under this contract will be done. **CONTRACTOR** will also maintain employer's liability insurance.
- B. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury coverage.

ARTICLE XVIII
Compliance with ORC § 2909.33 (C)

Check One Box:

The **CONTRACTOR** certifies that the **CONTRACTOR** does not receive funding in the aggregate amount greater than \$100,000.00 annually from the state of Ohio, any instrumentality of the state of Ohio, and any political subdivision of the state of Ohio.

-OR-

The **CONTRACTOR** certifies that the **CONTRACTOR** is currently in compliance with section 2909.33(C) of the ORC in that the **CONTRACTOR** has not and does not provide material assistance to any organization listed on the United States Department of State terrorist exclusion list or any such similar lists referenced in section 2909.33(C) of the ORC. "Material assistance" or "material support or resources" means currency, payment instruments, other financial securities, funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation, or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials. The **CONTRACTOR** further certifies that that the **CONTRACTOR** is not, nor has been, a member of any organization referenced above and that the **CONTRACTOR** shall notify **ODH** in any change of status regarding this certification. **CONTRACTOR** agrees that if this representation and warranty is deemed false, the contract will be void *ab initio* as between the parties to this contract and any funds paid to the **CONTRACTOR** shall be immediately repaid to **ODH** or an action for recovery may be immediately commenced by **ODH** for the recovery of said funds.

ARTICLE XIX
Construction

This agreement shall be governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the parties hereto in connection with disputes concerning validity and enforcement of this agreement. Should any portion of this contract be found unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this contract shall not be affected thereby, provided that the absence of the unenforceable provision does not render the performance of the remainder of the contract impossible.

IN WITNESS WHEREOF, the parties, by signing below, indicate their agreement to the above.

Date

The **CONTRACTOR**'s Authorized Representative
Tax ID #XX-XXXXXX

Date

Anne R. Harnish, Acting Director
Ohio Department of Health

ATTACHMENT B

Attestation Statement

Request for Proposal PREV-30050

I hereby attest that to the best of my knowledge and belief the information and data contained in this proposal are true and correct. I further attest that I have reviewed the model Contract (Attachment A of this Request For Proposals) and that I am willing to execute them substantially as written within fourteen (14) days after I am notified of my selection to perform the tasks under this RFP.

Signature of Authorized Representative

Date

