

## **OHIO DEPARTMENT OF AGING**

EVALUATION OF OHIO'S PREADMISSION SCREENING SYSTEM PROVIDING  
OPTIONS AND RESOURCES TODAY (PASSPORT)

### **REQUEST FOR PROPOSALS**

RFP NUMBER 06-121605

DATE ISSUED: November 15, 2005

PROPOSAL DUE: December 16, 2005

ALL PROPOSALS MUST BE SENT TO:

Brenda Roberts-Luke, CPPB  
Ohio Department of Aging  
50 W. Broad St., 9<sup>th</sup> Fl.  
Columbus, OH 43215-3363

INQUIRY AND RESPONSE PERIOD BEGINS: November 15, 2005

INQUIRY AND RESPONSE PERIOD ENDS: December 9, 2005

INQUIRY CONTACT: [www.goldenbuckeye.com/passportrfp\\_qa.html](http://www.goldenbuckeye.com/passportrfp_qa.html)

## **Calendar of Events**

The schedule for this project is given below. The State may change this schedule at anytime.

An applicant may submit inquiries regarding this RFP anytime during the inquiry period at [www.goldenbuckeye.com/passportrfp\\_qa.html](http://www.goldenbuckeye.com/passportrfp_qa.html). Answers to inquiries will be responded to and posted on that web page within three (3) business days.

### **Dates:**

#### **Firm Dates**

RFP Issued:	November 15, 2005
Inquiry & Response Period Begins:	November 15, 2005
Inquiry & Response Period Ends:	December 9, 2005
Proposal Due Date:	December 16, 2005

#### **Estimated Dates**

Issuance of Purchase Order:	February 3, 2006
Work Begins:	February 6, 2006
Work Ends:	June 30, 2007

**Cover Page**

**Ohio Department of Aging  
Request for Proposals  
EVALUATION OF OHIO'S PREADMISSION SCREENING SYSTEM  
PROVIDING OPTIONS AND RESOURCES TODAY (PASSPORT)  
RFP # 06-121605**

Applicant's Name: _____
Address: _____ _____
Federal Taxpayer Identification Number: _____
Project Manager: _____
Phone Number: _____
Total Budget Request: _____
Contractor's Name: _____
Authorized Contractor's Signature: _____ Date: _____
Title: _____

## **STRUCTURE OF THIS REQUEST FOR PROPOSALS**

- I. MANDATORY ELIGIBILITY REQUIREMENTS
- II. INTRODUCTION
- III. BACKGROUND
- IV. RESEARCH QUESTIONS AND DELIVERABLES
- V. PERFORMANCE REQUIREMENTS
- VI. GENERAL TERMS AND CONDITIONS
- VII. APPLICATION PROCEDURE/PROPOSAL FORMAT
- VIII. PROPOSAL REVIEW AND EVALUATION CRITERIA
- IX. CONTRACT AWARD
- X. ATTACHMENTS
  - 1 – CMS approved PASSPORT waiver
  - 2 – CMS Quality Framework
  - 3 – Business Associate Agreement
  - 4 – Ohio laws and regulations governing confidentiality of Medicaid information.
  - 5 - IRS Form W-9

## I. MANDATORY ELIGIBILITY REQUIREMENTS

Any entity with the capacity to fully research the evaluation questions contained in this Request for Proposals is invited to reply. There are three restrictions that applicants should be aware of:

1. Due to the nature of the funding for this evaluation, ODA is limiting indirect/facilities and administration costs to 10% of the total cost of the project.
2. Due to the nature of the evaluation questions posed herein, applicants may **not** be current providers of services to consumers enrolled in PASSPORT.
3. Due to the nature of the evaluation questions posed herein, PASSPORT Administrative Agencies and organizations that own or operate a nursing facility are not eligible applicants to conduct this evaluation.

## II. Introduction

During the legislative process that preceded the enactment of Am. Sub. H.B. 66 (the budget bill for the SFY 2006-2007 biennium), the General Assembly indicated its desire for an independent evaluation of Ohio's Home and Community-Based Services (HCBS) Medicaid waiver program for Ohioans age 60 and over. This program, PASSPORT, is managed by the Ohio Department of Aging (ODA) subject to the oversight of, and pursuant to, an interagency agreement with the state's single state Medicaid agency, the Ohio Department of Job and Family Services (ODJFS).

In designing this evaluation, ODA convened an advisory council of key stakeholders to assist ODA in developing the research questions for this evaluation.

Applicants should be aware that this advisory council will continue to meet to guide the course of the evaluation and that the successful applicant will be expected to meet with the advisory council in Columbus. ODA projects that these meetings will be held quarterly beginning in early spring 2006.

The successful applicant will be expected to develop a series of reports/deliverables that answer the research questions and present these reports to the advisory council for their input and reaction. A draft of a final summary report on the entire evaluation will be due April 1, 2007 to ODA and the advisory council. Following a comment period on the final draft, the successful applicant will prepare a final report to the Governor, the President of the Ohio Senate, and the Speaker of the Ohio House. The due date for this final report is **no later than June 1, 2007**. As noted in **VIII. Proposal Review Criteria**, ODA will pay the successful applicant a performance bonus of \$100 per day for early completion of the final report.

ODA's goal in issuing this Request for Proposals is to obtain an independent evaluation of PASSPORT, focusing on whether the PASSPORT program meets the assurances Ohio has made to the federal Centers for Medicare and Medicaid as contained in the most recent approved waiver application submitted by Ohio and last updated in July, 2005. A copy of the approved waiver application is attached as Attachment 1.

ODA's defined scope for this evaluation is as follows:

Is the PASSPORT program complying with the assurances Ohio submitted to the federal government and providing efficient and cost-effective services as an alternative to facility-based long-term care?

### **III. Background**

#### **History**

In 1981, Congress, in response to the perceived “institutional bias” of the Medicaid program, passed Public Law 97-35 to give states an opportunity to apply for special Home and Community-Based Services (hereinafter “HCBS”) Medicaid waivers to provide services to Medicaid-eligible consumers who would otherwise qualify for placement in an institutional setting , such as a hospital, nursing facility (NF), or intermediate care facility for the mentally retarded/developmentally disabled (ICF-MR). These Medicaid waivers are sometimes referred to in the literature as “2176” waivers (after the public law section that created them) or “1915c” waivers (after the codified section of the Social Security Act).

Since that time, the federal Centers for Medicare and Medicaid Services (hereinafter “CMS”) has granted literally hundreds of waivers to every state and territory. Ohio’s PASSPORT (Preadmission Screening System Providing Options and Resources Today) program is one such HCBS Medicaid waiver. Other Ohio state agencies operating HCBS waivers are ODJFS and ODMRDD.

PASSPORT is the oldest of Ohio’s HCBS Medicaid waiver programs and dates to 1984. PASSPORT began operating in two regions of the state as a demonstration – central Ohio and the rural Miami Valley; since 1990, PASSPORT has operated statewide. Today (November, 2005), PASSPORT provides HCBS services to an average daily census of more than 25,000 older Ohioans, making it one of the largest HCBS waivers in the United States.

#### **PASSPORT’s “Gateway” function**

As the name implies, PASSPORT is more than an HCBS Medicaid waiver program. It has an important gateway function for Ohio’s system of long-term services and supports. All applicants to nursing facilities in Ohio, regardless of source of income, are required by federal law to be screened for potential MR/DD or mental health needs (this process is referred to as “PASRR”) to determine the appropriateness of placement in a nursing facility. In addition, PASSPORT has provided in-person assessment upon request to those Ohioans exploring the future need for long-term services and supports. Am. Sub. H.B. 66 (responding to a recommendation from the Ohio Commission to Reform Medicaid), in requiring the Ohio Department of Aging to offer long-term care consultation services to consumers expected to “spend down” resources to Medicaid eligibility levels within six months of admission to a nursing facility, expands this role for PASSPORT. This expanded role will be implemented during the course of this evaluation.

PASSPORT also serves as the gateway to several other programs managed by ODA – the Residential State Supplement (RSS) and the Choices program which is, like PASSPORT, a HCBS Medicaid waiver. The Choices waiver is a new self-directed services waiver

operated in central and southern Ohio for a subset of PASSPORT eligible consumers. In operation, it resembles the national “Cash and Counseling” demonstration project. Consumers, in effect, become employers of record for their caregivers and are assisted with tax and worker compensation issues by a fiscal intermediary. Pursuant to Am. Sub. H.B. 66, ODA envisions that PASSPORT will serve as the gateway to Ohio’s new assisted living Medicaid waiver in SFY 2007. The Choices waiver has been recently evaluated and a separate RFP will be issued by ODA this winter for an evaluation of the assisted living waiver. Therefore, neither waiver is included in this evaluation of PASSPORT.

### **PASSPORT Home Care**

Aside from its systems-level responsibilities, PASSPORT provides a wide array of HCBS services to eligible Ohioans. Most PASSPORT consumers receive personal care services and personal care consumes the bulk of the program’s budget. But many other services are also available including: adult day services, home-delivered meals, homemaker services, medical transportation, durable medical equipment, emergency response systems, social work and nutritional counseling, minor home modification, and major chore services. In addition to these services that would not be provided by Medicaid in the absence of a Medicaid waiver, each PASSPORT consumer receives a Medicaid card, which the consumer may use to access other Medicaid, covered services. These traditional state plan services are not case managed through PASSPORT. It is envisioned that most PASSPORT consumers will qualify automatically for enrollment into Medicare Part D and thus responsibility for their prescription drug coverage will shift from Medicaid to Medicare. As noted earlier, at the present time, the average daily census for PASSPORT home care is more than 25,000.

In the past, (1994, 2002, and 2003) PASSPORT home care enrollment has been restricted due to budgetary concerns and ODA projects that this will be true throughout the life of this evaluation. ODA has restricted enrollment to 625 new consumers each month (compared with a projected need of almost 850 this year and almost 900 next year based on current census data). This has created a waiting list for PASSPORT home care already in SFY 2006. The General Assembly did include a provision in Am. Sub. H.B. 66 that allows ODA to enroll nursing facility residents who are on the waiting list for PASSPORT in addition to the 625 monthly enrollment allowed by ODA (“Home First” enrollments).

### **PASSPORT Administrative Structure**

As noted above, PASSPORT operates under the auspice of federal law and is approved by CMS. Existing HCBS Medicaid waivers are approved by CMS for a five-year period and for a maximum number of participants (sometimes referred to as the “approved slot number”). PASSPORT is in the third year of its current approval period. CMS typically does an in-depth, on-site review during the fourth year of the approval period; thus, applicants should assume that some of the evaluation activities will take place during the period when CMS will be reviewing PASSPORT on-site. The PASSPORT waiver was

recently amended by CMS to allow for “Home First” priority enrollments and to reduce the number of approved slots in year five of the waiver period.

Also as noted above, ODA manages the PASSPORT program with the oversight of Ohio’s single state Medicaid agency, ODJFS. Applicants should assume that ODJFS staff will be engaged in ongoing oversight activities during the evaluation period. Within ODA, programmatic responsibilities are housed in ODA’s Community Long Term Care Division (CLTCD).

ODA manages PASSPORT through a network of thirteen PASSPORT Administrative Agencies (Ohio’s twelve designated regional Area Agencies on Aging – created pursuant to the federal Older Americans Act-and one of the original PASSPORT pilot projects operated by Catholic Social Services in Sidney, serving the rural Miami Valley counties). The PASSPORT Administrative Agencies (PAAs) enter into a “three-party” agreement with ODA and ODJFS that sets performance requirements for the PAAs in relation to PASSPORT (there is an additional “two party” agreement between the PAA and ODA governing certain non-Medicaid funded operations). For example, this agreement requires PAAs to maintain a consumer to case manager ratio of 1:65. The PAA is responsible for preadmission reviews, assessment activities related to PASSPORT or NF admission, and ongoing case management for those enrolled in PASSPORT. The PAA is not permitted to provide PASSPORT home care services to consumers; other local service providers, both non-profit and for-profit organizations provide personal care, adult day services, home-delivered meals and the other authorized PASSPORT home care services. At present, there are 1279 certified PASSPORT providers. Since Ohio does not have licensing requirements for home care providers, the state has created certification standards for PASSPORT providers. These standards are in the process of being revised and will be filed in the near future by ODA. Since PASSPORT is a 1915c Medicaid waiver, any willing provider that meets the certification standards can become a PASSPORT provider. Consumers are invited to choose among certified providers but most consumers do not exercise this option. In cases where the consumer does not choose a provider, a provider is assigned based on cost and service provider capacity. PAAs pay service providers directly for services that are both authorized by a PAA case manager and delivered by the service provider. ODA transfers money to the PAAs on a monthly basis. PAAs estimate their needs for the upcoming months; these advance payments are reconciled with actual expenses and this reconciliation provides the basis for the next monthly estimate of needed funds by the PAA.

Staff performing clinical functions at PAAs are professional licensed personnel, i.e., registered nurses and social workers. At present, the PAAs employ a total of 76 screeners (performing preadmission review responsibilities), 112 assessors, and 350 case managers. PASSPORT’s approved slot number in SFY 2006 is 34,957 (that is, the number of unduplicated consumers served in any one year, as contrasted with the average daily census of the program). The total budget for PASSPORT is just over \$345 million dollars in both state and federal funds for SFY 2006. Because PASSPORT is a Medicaid program, the federal government matches non-federal funds. Non-federal PASSPORT funds are derived from state General Revenue Funds, a franchise fee on nursing facility

beds (\$1 per bed of the \$6.25 franchise fee goes to fund state agency home care programs, especially PASSPORT), and a small amount of revenues is derived from off-track betting.

### **PASSPORT Rates**

The PASSPORT rate setting structure has evolved over time based on three principal factors: 1. the geographic location of the service provider; 2. the type of service provided; and 3. macroeconomic factors affecting Ohio as a whole, (i.e., recession and funding limitations). For services such as personal care and homemaker services, there is regional variation based on the history of each region of the state with rates being higher, for example, in Cincinnati and Columbus, than Cleveland or Akron. On the other hand, rates for adult day services are based on two levels of service – enhanced and intensive – and are statewide rates with no regional variation. Rates for services such as durable medical equipment and minor home modification are set on a “bid” per “job” basis – with the lowest and most responsive bidder selected.

### **PASSPORT Monitoring and Quality Assurance Activities**

As noted above, PASSPORT is monitored by both CMS and ODJFS for compliance with federal requirements for all HCBS Medicaid waiver programs. CMS has recently developed a new “quality framework” for HCBS Medicaid waivers and Ohio is in the process of modifying its quality assurance activities for all its HCBS Medicaid waivers within the parameters set by the new “quality framework.” (See Attachment 2).

In addition to oversight by these two key outside agencies, ODA monitors its PAAs on a regular basis. PAAs receive an on-site fiscal monitoring visit annually to ensure the fiscal integrity of the PASSPORT program. In addition, a program review is done by ODA’s CLTCD on a biannual basis. As part of the programmatic review, a sampling of PASSPORT consumers are interviewed in-person using the Participant Experience Survey (PES) developed by CMS. The PES is designed to determine the extent to which PASSPORT home care is meeting the individualized needs of PASSPORT consumers.

PASSPORT service providers are monitored on an annual basis by the PAAs. Monitoring activities at the PAA level consist of a structural compliance review (SCR) that measures compliance with state certification standards. Providers not meeting the standards can be sanctioned. Sanctions include requiring a plan of correction, suspending further PASSPORT referrals, or decertification of the provider from the PASSPORT program, depending on the seriousness of the deficiency. In addition, a sampling of PASSPORT providers each year are subject to a unit review of the services provided to ensure that services that the provider has billed for are actually delivered to the consumer. An incident reporting system tracks adverse outcomes (and their resolutions) experienced by consumers. PAAs have been experimenting with a tool, SASI, which measures consumer satisfaction and experience with individual service providers. SASI is based on the national Home Care Satisfaction Measure (HCSM) but has modified response categories. It is anticipated that use of SASI by the PAAs will become more widespread

during the evaluation period as ODA develops a mechanism to store SASI data in its information management system for PASSPORT.

ODA has also conducted a number of consumer satisfaction surveys for PASSPORT, beginning in the mid-90s.

### **PASSPORT Data Collection**

ODA has created a centralized data collection and decision support tool for PASSPORT – the PASSPORT Information Management System (PIMS). PIMS is a software system that collects data on preadmission review, assessment activity, service plans for consumers that have been developed with the assistance of PAA case managers, and individual claims records submitted by service providers. The service providers are paid directly by the PAAs based on whether the service provided has been authorized by the case manager and actually delivered by the service provider. The last PAA to be transferred to the new PIMS system was the Western Reserve Area Agency on Aging in Cleveland. Conversion to the new system was completed in September 2004.

PAAs currently are using PIMS version 3.1. Upcoming of PIMS releases will add new billing capabilities for service providers in compliance with HIPAA (Health Insurance Portability and Accountability Act), the capability to collect data on PASSPORT waiting lists and “Home First” enrollees, the Program of All-Inclusive Care for the Elderly (PACE), and the new assisted living Medicaid waiver. Beyond that, ODA anticipates regular “maintenance” releases of the software on a semiannual basis during the life of this evaluation.

The successful applicant will have access to the PIMS database to assist in answering the research questions, but will be required to sign a Business Associate agreement with ODA in compliance with HIPAA (a copy of this agreement is attached as Attachment 3) and, in addition, will be required at all times to strictly adhere to Medicaid confidentiality requirements during and upon completion of the services listed in this RFP. These requirements, §5111.61 (Confidentiality of Information) Ohio Revised Code and §5101:1-37-01.1 (Medicaid Disclosure of Recipient Information and Confidentiality) Ohio Administrative Code are attached as Attachment 4.

### **PASSPORT Eligibility**

To be eligible for PASSPORT, consumers must meet the following requirements:

Age 60+

Consumer agrees to participate in the waiver.

Consumer meets the requirements for a nursing facility level of care (functional requirement)

Physician agrees with the service plan for the consumer

Individual lives in an appropriate (i.e., non-institutional and unlicensed) care setting

Care plan must not exceed the average cost of Medicaid services in a nursing facility (note that Ohio has a “cost cap” requirement that is set at 50% of the average cost of a nursing facility in SFY 2000 to ensure that this federal requirement for cost neutrality for HCBS Medicaid waivers is met).

Consumer meets the financial criteria to be eligible for Medicaid (four notes here):

1. PASSPORT uses a special income standard equivalent to 300% of the SSI standard of need;
2. PASSPORT uses the “spousal impoverishment” assets and income rules that apply to nursing facility residents;
3. PASSPORT applicants are subject to the federal 30 month “look behind” period for the examination of assets transfers as are nursing facility applicants; and
4. PASSPORT consumers are subject to the estate recovery provisions of state and federal law as are nursing facility residents).

The consumer can be maintained safely in the community

The consumer’s needs cannot be met by other resources

There is a PASSPORT “slot” available.

PASSPORT consumers are permitted to retain an income allowance that enables the consumer to pay expenses that PASSPORT cannot pay. The most notable example is that room and board expenses are not Medicaid covered expenses except in cases where the consumer resides in an institution such as a nursing facility.

#### IV. RESEARCH QUESTIONS AND DELIVERABLES

The primary objective of this evaluation is a thorough examination of Ohio's PASSPORT program. Ohio's primary objective is to evaluate whether the PASSPORT program is meeting the assurances the state has made to the federal Centers for Medicare and Medicaid Services in its approved application for the PASSPORT Medicaid waiver. A copy of the PASSPORT Medicaid waiver application is attached to this Request for Proposals as Attachment 1.

In consultation with the advisory council previously described, ODA has developed the following **scope** for the PASSPORT evaluation:

Is the PASSPORT program complying with the assurances Ohio submitted to the federal government and providing efficient and cost-effective services as an alternative to facility-based long-term care?

ODA and the advisory council have predetermined topical areas and research questions for the PASSPORT evaluation. **Applicants are required to develop a methodology that addresses each topical area.**

Each topical area will constitute a separate report to be made available to ODA and the advisory council. Each report thus becomes a deliverable for this evaluation. The deliverables for the evaluation will consist of **five topical reports and a final summary report** of the entire evaluation.

1. Consumer eligibility.
2. Cost neutrality.
3. Assuring the health and welfare of PASSPORT consumers (Quality Assurance mechanisms).
4. Assessment and service plan development process.
5. Fiscal accountability.
6. Draft of Final Report
7. Final Report

Each topical area is discussed in more detail below.

##### ***Consumer eligibility for PASSPORT***

- Do PASSPORT consumers meet the eligibility requirements for participation in the Medicaid waiver program? Specifically, are they financially eligible and do they meet the requirement that consumers have a Nursing Facility level of care?
- What factors impact the length of stay on the PASSPORT program by consumers and what factors lead to disenrollment from PASSPORT to enter a nursing facility?

### ***Cost neutrality of PASSPORT***

- Are the total Medicaid costs for PASSPORT consumers less than total Medicaid costs for nursing facility residents age 60 and over?
- How does the total public cost of maintaining PASSPORT consumers in the community on PASSPORT compare with the total public cost of caring for a nursing facility resident?

### ***Assuring health and welfare of consumers – providing quality home and community-based services through PASSPORT.***

- Do PASSPORT service providers meet certification standards set forth in the Ohio Administrative Code?
- Does PASSPORT have quality assurance processes in place and working to safeguard the health and welfare of participants? (e.g., structural compliance review, incident reporting systems, participant experience survey/site monitoring process, use of consumer interviews to determine satisfaction with service providers).
- How congruent are the existing PASSPORT quality assurance processes with the new CMS “Quality Framework” (see Attachment 2) that Ohio will be required to fully implement by 2008?
- What is the tenure of PASSPORT service providers and what factors impact it?

### ***Assessment and Service Plan Development Process***

- What is the effectiveness of the PASSPORT assessment process in ensuring that PASSPORT consumers are supported in making informed choices about long-term care?
- Are the service plans developed for enrolled PASSPORT consumers based on the assessed needs of and the informed choices made by consumers?

### ***Fiscal Accountability of PASSPORT***

- Are Ohio’s fiscal processes (i.e., provider payments) sufficient to ensure the fiscal accountability for funds expended through PASSPORT?

### **Work Schedule**

The applicant must provide a detailed work schedule (timeline) for the project and all the deliverables. The work schedule should be delivered as a Gantt chart, where appropriate,

showing all major work tasks and milestones. The schedule should clearly demonstrate how the work will be fully completed and include turn-around times.

**Interaction with Advisory Council**

The successful applicant must make key project staff available to consult with the advisory council on a regular basis as each deliverable is completed.

## V. PERFORMANCE REQUIREMENTS

The Ohio Department of Aging is seeking a Contractor to conduct an evaluation of the PASSPORT program. The evaluation will consist of a series of seven deliverables designed to answer the specific research questions detailed in Section IV. ODA's expectation is that the Contractor will offer suggestions and recommendations for the improvement of PASSPORT based on both its evaluative activities and best practices for home and community-based services Medicaid waivers.

**Organization, Management and Qualifications.** ODA requires that organizations bidding to conduct this study demonstrate their experience with similar studies.

Given the limited time frame to conduct this study, it is imperative that the Contractor and ODA's Work Representative communicate regularly to identify project barriers and devise strategies to overcome obstacles, if applicable. The applicant must provide a detailed work schedule (timeline) for the project including the Deliverables (as detailed in Section IV). The work schedule should be delivered as a Gantt chart, where appropriate, showing all major work tasks and milestones. The schedule should clearly demonstrate how the work will be fully completed and include turn-around times.

**Methodology.** ODA expects the applicant to propose a methodology to answer the research questions contained in Section IV. To ensure the success of the evaluation, ODA will grant the successful applicant full access to its PIMS data, to ODA and PAA staff as needed, and will assist the successful applicant in accessing other relevant resources consistent with the methodological approach adopted by the successful applicant.

In addition to primary data collection, the Contractor will be expected to be or to become familiar with best practices in regard to the delivery of home and community-based Medicaid waiver programs.

**Advisory Group.** The Contractor will be required to participate in the advisory committee established by ODA for the PASSPORT evaluation. These advisory committee meetings occur in Columbus, Ohio. While ODA does not expect the Contractor to be involved in establishing the advisory group, ODA does expect the Contractor to keep the advisory group informed of the project's performance throughout the grant period. ODA envisions that there will be a series of meetings to allow the advisory council an opportunity for input on each of the deliverables required in Section IV. The Contractor's travel expenses to advisory committee meetings shall be paid by the Contractor and the Ohio Department of Aging will not be liable for additional payments to the Contractor for travel expenses.

**Budget and Budget Narrative.** The applicant must provide a budget and a budget narrative that explains the costs associated with each budget item listed. For each budget item listed, a detailed narrative breakdown of each major set of activities along with costs must be provided. The budget must clearly identify what funds will be administered

directly by the lead Contractor and what will be subcontracted to other partners, if any. The designated lead Contractor is solely responsible for the fiscal management of the project. Sub-Contractor's working on the project must be approved in advance by the Ohio Department of Aging.

## VI. GENERAL TERMS AND CONDITIONS

### SECTION ONE: PERFORMANCE AND PAYMENT

**Statement of Work.** The RFP and the Contractor's Proposal (Collectively referred to as the "RFP") are a part of this Contract and describe the work (the "Work") the Contractor will do and any materials or services (including all work products) the Contractor will deliver (the "Deliverables") under this Contract. The Contractor will do the Work in a professional, timely, and efficient manner and will provide the Deliverables in a proper fashion.

The Contractor will consult with the appropriate State representatives and others necessary to ensure a thorough understanding of the Work and satisfactory performance. The State may give instructions to or make requests of the Contractor relating to the Work, and the Contractor will 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 until June 30, 2007.

The Contractor must comply with all its obligations under this Contract within the specified time. If the Contractor does not meet those times, the Contractor will be in default, and the State may terminate this Contract under the termination provision contained below. But the State may also have certain obligations to meet. Those obligations, if any, are also listed in the RFP. If the Contractor's failure to meet the delivery dates in the RFP is due to the State's failure to meet its own obligations in a timely fashion, then the Contractor will not be in default, and the dates effected by the State's failure to perform will be extended by the same amount of time as the State's delay. The Contractor may not rely on this provision unless the Contractor has given the State written notice of the State's failure to meet its obligations, with reasonable specificity, soon after the State's delay has begun and while the State's delay is happening. The extension of the Contractor's performance time will be the Contractor's only remedy for the State's delay.

**Compensation.** In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the RFP (the "Fee"), the performance bonus for early completion of the evaluation if earned by the Contractor, plus any other expenses identified as reimbursable in the RFP. But in no event will payments under this Contract exceed the "not-to-exceed" amount in the RFP without the prior, written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of all relevant parts of the Work tied to the payment. Payment of the Fee is also contingent on the Contractor delivering a proper invoice and any other documents required by the RFP. An invoice must comply with the

State'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 will send all invoices under this Contract to the "bill to" address in the RFP 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 "Code"). That section of the Code currently requires monthly interest payments equal to one 12<sup>th</sup> of the rate per annum prescribed by Section 5703.47 of the 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 may then deduct the disputed amount from its payment as a non-exclusive remedy. In addition, the State will consult with the Contractor as early as reasonably possible about the nature of the dispute and the amount of payment affected. When the Contractor has resolved the disputed matter to the State's satisfaction, the State will pay the disputed amount within 30 business days after the matter is resolved.

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 will reimburse the State for that amount at the end of the 30 calendar days as a non-exclusive 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.

**Reimbursable Expenses.** The Contractor will assume all expenses that it incurs in the performance of this Contract.

**Travel Expenses.** Any travel or per diem required by the Contractor to carry out its obligations under the contract shall be at the Contractor's expense.

**Employment Taxes.** Each party will be solely responsible for reporting, withholding and paying all employment related taxes, payments and withholdings for its own personnel, including, but not limited to, Federal, state and local income taxes, social security, unemployment or disability deductions, withholdings, and payments (together with any interest and penalties not disputed with the appropriate taxing authority). All people the Contractor provides to the State under this Contract will be deemed employees of the Contractor for purposes of withholdings, taxes, and other deductions or contributions required under the law.

**Sales, Use, Excise, and Property Taxes.** The State is 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.

**Contractor Transition:** Prior to the expiration of this Contract or if at any time the State should terminate this Contract, the State may require the Contractor to cooperate with any subsequent contractor who might assume performance of the Contract. In this event, the Contractor and the State shall mutually agree on the timing and any costs associated with such transition. The Contractor agrees to return any and all information provided by ODA and the stakeholders involved in this project, and information or data created by Contractor in its entirety in the format required by Aging. The Contractor agrees that it will not use the information once the Contract has been terminated.

## **SECTION TWO: WORK & CONTRACT ADMINISTRATION**

**Related Contracts.** The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State such that the Work duplicates the work done or to be done under the other contracts.

**Subcontracting.** The Contractor may not enter into subcontracts for the Work after award without written approval from the State. But the Contractor will not need the State'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. The State's approval of the use of subcontractors does not mean that the State 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 will assume responsibility for all Deliverables whether it, a subcontractor, or third-party manufacturer produces them in whole or in part. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Contract. 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 must also 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, 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 will indemnify the State for the damage. If the Contractor is using approved

subcontractors, any and all vendors that are currently certified through the State of Ohio MBE or EDGE programs must be identified.

**Record Keeping.** The Contractor will keep all financial records in accordance with generally accepted accounting procedures consistently applied. The Contractor will file documentation to support each action under this Contract in a manner allowing it to be readily located. And the Contractor will 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 State may audit the Contractor's records and other materials that relate to the Work. This audit right will also apply to the State's duly authorized representatives and any person or organization providing financial support for the Work. Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principal place of business or its place of business where the Work was done. If this is not practical, the Contractor will assume the cost of collecting, organizing, and relocating the records and any technology needed to access the records to the Contractor's office nearest Columbus whenever the State or anyone else with audit rights requests access to the Contractor's Work records. The Contractor will do so with all due speed, not to exceed five business days. If any audit reveals any material deviation from the Work's specifications or any misrepresentation the State will be entitled to recover damages, as well as the cost of the audit. For each subcontract in excess of \$25,000.00, the Contractor will require its subcontractors to agree to the requirements of this section and of the record-keeping section. Subcontracts with smaller amounts involved need not meet this requirement. But the Contractor may not artificially break up contracts with its subcontractors to take advantage of this exclusion.

**Equal Employment Opportunity.** During the Work, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status ("Protected Status"). The Contractor will ensure that applicants for employment and employees are treated without regard to their Protected Status. The Contractor agrees to post notices with the provisions of this section in conspicuous places that are available to employees and applicants and to state in all solicitations and advertisements for employees that it is an equal opportunity employer.

**Non-Discrimination.** Pursuant to §125.111 of the Ohio Revised Code, the Contractor agrees to abide by the following terms:

- a. In the hiring of employees for the performance of work under this contract or any subcontract, neither the Contractor nor any subcontractor of the Contractor shall, by reason of race, color, religion, sex, age, handicap, national origin, or ancestry, discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the contract relates;

- b. Neither Contractor, nor any subcontractor of the Contractor, or any person acting on behalf of the Contractor or any subcontractor of the Contractor shall in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this contract on account of race, color, religion, sex, age, handicap, national origin, or ancestry.

**State Personnel.** During the term of this Contract and for one year after completion of the Work, the Contractor will not hire or otherwise contract for the services of any state employee involved with the Work.

**Replacement Personnel.** The quality and professional credentials of the people the Contractor submitted in its proposal to do the Work were material factors in the State's decision to enter into this Contract. Therefore, the Contractor will use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor will not remove those people from the Work without the prior, written consent of the State, except as provided below.

The Contractor may remove a person listed in the RFP from the Work if doing so is necessary for legal or disciplinary reasons, provided that the Contractor makes a reasonable effort to give the State 30 calendar days' prior, written notice of the removal. The Contractor must have qualified replacement people available to replace any people listed by name in the RFP. When the removal of a listed person is permitted under this Section, or if a person becomes unavailable, the Contractor will submit the resumes for two replacement people for each person removed or who otherwise becomes unavailable. The Contractor will submit the two resumes, along with such other information as the State may reasonably request, within five business days after the decision to remove a person is made or the unavailability of a listed person becomes known to the Contractor.

The State will select one of the two proposed replacements or will reject both of them within ten business days after the Contractor has submitted the proposed replacements to the State. The State may reject the proposed replacements for any legal reason(s). Should the State reject both replacement candidates due to their failure to meet the mandatory eligibility requirements identified in the RFP, or should the Contractor fail to provide the notice required under this Section or fail to provide two qualified replacement candidates for each removed or unavailable person, the Contractor will be in default and the cure period for default specified elsewhere in this Contract will not apply. In the event of such a default, the State will have the right to terminate this Contract and to have the damages specified elsewhere in this Contract for termination due to default.

The State may determine that proposed replacement candidate(s) meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the work of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this Contract. Therefore, the State will have the right to reject any candidate that the State determines will provide it with diminished value.

Should the State reject both proposed candidates for any legal reason other than their failure to meet the minimum qualifications identified in the RFP, then such rejection will be deemed a termination for convenience.

The State has an interest in providing a healthy and safe environment for its employees and guests at its facilities. The State also has an interest in ensuring, and right to ensure, that its operations are carried out in an efficient, professional, legal, and secure manner. The State, therefore, will have the right to require the Contractor to remove any individual doing any part of the Work if the State determines that any such individual has or may interfere with the State's interests identified above. In such a case, the request for removal will be treated as a case in which an individual providing services under this Contract has become unavailable, and the Contractor will follow the procedures identified above for replacing unavailable people. This provision applies to people engaged by the Contractor's subcontractors if they are listed as key people on the RFP.

**Suspension and Termination.** The State may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract 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 State may also terminate this Contract if the Contractor violates any law or regulation in doing the Work, or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In any such case, the termination will be for cause, and the State's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 15 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 15 calendar days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract. The State may also terminate this Contract in the case of breaches that are cured within 15 calendar days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the State may terminate this Contract 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 15 calendar days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State may also terminate this Contract for its convenience and without cause.

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 will immediately cease all Work and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor will also immediately prepare a report and deliver it to the State. The report must detail any Deliverables completed or partially completed but not delivered to the State at the time of termination.

The Contractor will also deliver all the completed and partially completed Deliverables to the State with its report. But, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternative form of delivery.

If the State terminates this Contract for cause, it will be entitled to cover for the Work by using another contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for the Work to the extent that such costs, exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

The State will have the option of suspending rather than terminating the Contract where the State believes that doing so would better serve its interests. In the case of suspension of the Work rather than termination for cause, the Contractor will not be entitled to any compensation for any part of the Work performed.

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. And the Contractor will prepare a report concerning the Work just as is required by this Section in the case of termination. After suspension of the Contract, the Contractor will perform no Work without the consent of the State and will resume the Work only on written notice from the State to do so. In any case of suspension, the State retains its right to terminate this Contract rather than to continue the suspension or resume the Contract. If the suspension is for the convenience of the State, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

The State will not suspend the Contract for its convenience more than once during the term of this Contract, and any suspension for the State's convenience will not continue for more than 30 calendar days. If the Contractor does not receive notice to resume or terminate the Work within the 30 day period, then this Contract will terminate automatically for the State'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 will indemnify the State for any liability to them. Each subcontractor will hold the State harmless for any damage caused to them from a suspension or termination. They will look solely to the Contractor for any compensation to which they may be entitled.

**Representatives.** The State's representative under this Contract will be the person identified on the RFP or a subsequent notice to the Contractor as the "Work Representative." The Work Representative will review all reports made in the performance of the Work by the Contractor, will conduct all liaison with the Contractor, and will accept or reject the Deliverables. The Work Representative may assign a

manager responsibility for individual aspects of the Work to act as the Work Representative for those individual portions of the Work, if applicable and appropriate.

The Contractor's Project Manager under this Contract will be the person identified on the RFP as the "Project Manager." The Project Manager will conduct all communications with the State under this Contract. Either party, upon written notice to the other party, may designate another representative. But the Project Manager may not be replaced without the approval of the State if s/he is identified in the RFP as a key individual on the Project.

**Work Responsibilities.** The State will be responsible for providing only those things expressly identified, if any, in the RFP. If the State has agreed to provide facilities or equipment, the Contractor, by signing this Contract, warrants that the Contractor has either inspected the facilities and/or equipment or has voluntarily waived an inspection and will work with the equipment and/or facilities on an "as is" basis.

Normal working hours on State property is Monday through Friday (except for State holidays) from 8:00 a.m. to 5:00 p.m., Eastern Standard Time, with one hour for lunch. The Contractor must plan to work within these time constraints for any Work that will be done on State property.

If the Work, or parts of it, will be performed on the State's property, the State will provide the Contractor with reasonable access to that property.

The Contractor will provide a written report to the Work Representative at least as often as the end of every other week throughout the term of this Contract, or as otherwise provided in the RFP.

Unless otherwise provided in the RFP, the Contractor will be responsible for obtaining all official permits, approvals, and similar authorizations required by any local, state, or Federal agency for the Work.

**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 will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. In the event of any such excusable delay, the dates of performance or of delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and what steps it is taking to remove the cause and resume performance. 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 Contractor has no legal control. Notwithstanding the foregoing, the Contractor will

be responsible for all costs incurred to resume the program once the delay has been remedied.

**Acceptance.** The acceptance procedure for Deliverables will be an informal review by ODA to ensure that each Deliverable meets the conditions set forth in the RFP. When the agency accepts each Deliverable, a letter will be sent to the Contractor indicating such acceptance. A copy of this letter must be attached to each invoice for payment. If ODA does not accept the Deliverable, the Contractor agrees to cure the defect in the Deliverable. If the Contractor is unable to correct the defect in the Deliverable to the satisfaction of ODA then the contract may be suspended or terminated in accordance with the subsection titled “suspensions or terminations.” (above)

**Independent Status of the Contractor.** The parties will be acting as independent contractors. The partners, employees, officers, and agents (“Personnel”) of one party, in the performance of this Contract, will act only in the capacity of representatives of that party and not as Personnel of the other party and will not be deemed for any purpose to be Personnel of the other. Each party assumes full responsibility for the actions of its Personnel while they are performing services pursuant to this Contract and will be solely responsible for paying its Personnel (including withholding of and/or paying income taxes and social security, workers’ compensation, disability benefits and the like). Neither party will commit, nor be authorized to commit, the other party in any manner. The Contractor’s subcontractors will be considered the agents of the Contractor for purposes of this Contract.

### **SECTION THREE: OWNERSHIP & HANDLING OF INTELLECTUAL PROPERTY**

**Ownership of Deliverables.** All custom Work done by the Contractor and covered by this Contract will be owned by ODA, with all rights, title, and interest in all intellectual property that come into existence through the Contractor’s custom work being assigned to ODA.

Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State.

### **SECTION FOUR: 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; (2) unless otherwise provided in the RFP, be the work solely of the Contractor; and (3) no Deliverable will infringe on the intellectual property rights of any third party.

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; and (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.

The warranty regarding professionalism and material defects is a one-year warranty. All other warranties will be continuing warranties. If any portion of the Work or a Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to allow the Contractor to control the defense of the claim. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things: (1) modify the Deliverable so that it is no longer infringing; (2) replace the Deliverable with an equivalent or better item; (3) acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

**Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**

**Passage of Title.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable. All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State.

## **SECTION FIVE: CONSTRUCTION**

**Entire Document.** This Contract is the entire agreement between the parties with respect to the 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 State and the Contractor.

**Amendments - Waiver.** No amendment or modification of 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 construed as a waiver or relinquishment of any such

term and either party may at any later time demand strict and complete performance by the other party of such a term.

**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 will 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.

## **SECTION SIX: LAW & COURTS**

**Compliance with Law.** The Contractor agrees to comply with all applicable Federal, state, and local laws in the conduct of the Work, including but not limited to the Health Insurance Portability and Accountability Act.

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

**Conflicts of Interest.** No Personnel of the Contractor may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor will 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 will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. The Contractor will take all legal steps to ensure that such a person does not participate in any action affecting the Work under this Contract, unless the State has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

**Ohio Ethics and Elections Law.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics law, O.R.C. §102.04. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

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

**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 State.

**Governing Law.** The laws of Ohio will govern this Contract, and venue for any disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

**Appropriation Language.** The obligations of State under this contract are subject to and contingent upon the determination by the Director that sufficient funds have been appropriated by the General Assembly to the Ohio Department of Aging for the purposes of this contract and to the availability of such funds by the Director of Budget and Management as required by R.C. 126.07, and approval by the State Controlling Board, if required pursuant to Chapter 127 of the Ohio Revised Code.

**Campaign Contribution Language.** The Vendor hereby certifies that neither it nor any of the Vendor's partners, officers, directors, shareholders, not the spouses of any such persons have made contributions in excess of limitations specified in R.C. 3517.13

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

Moreover, in the response review process, the fact that there is a finding for recovery as defined in R.C. 9.24 may be considered in the scoring process, and a response rejected for this reason alone.

## VII. Application Procedure/Proposal Format

1. **FORMAT:** Applicants who would like to submit a proposal, must respond to the following items and must submit one (1) original and five (5) copies of the proposal for a total of six (6), completed, sealed, and signed copies which must be clearly marked **“Evaluation of Ohio’s PASSPORT Program RFP# 06-121605** on the outside of the envelope.

Send proposals to the following address:  
Ohio Department of Aging  
Fiscal Management Division – Attn: Brenda Roberts-Luke, CPPB  
Evaluation of Ohio’s PASSPORT program RFP# 06-121605  
50 West Broad St., 9th Floor  
Columbus, Ohio 43215-3363

No part of any submitted proposal shall be considered a matter of public record until 48 hours after the execution of an agreement between the successful applicant and ODA.

The State may reject any Proposals or unsolicited Proposal amendments that are received after the deadline. An applicant that mails its Proposal must allow for adequate mailing time to ensure its timely receipt. The State may reject late Proposals regardless of the cause for the delay.

ODA reserves the right to reject any or all proposals or waive minor irregularities when to do so would be in the best interest of ODA and the State of Ohio. “Minor irregularities” are those which will not have a significant adverse effect on overall competition, cost, or performance.

Each applicant must carefully review the requirements of this RFP and the contents of its Proposal. Once opened, Proposals cannot be altered, except as allowed by this RFP.

There is a 30-page (double spaced in type size no less than 11 point on 8.5 x 11 white bond paper) limitation for the Project Narrative portion of the proposal. The following items are not included in the Project Narrative portion of the proposal and therefore, do not count toward the total page limit:

- Cover Page
- Work Plan/Gantt Chart
- Organization, Management and Qualifications – including project references
- Organizational Chart
- Budget and Budget Narrative
- Two (2) signed Contracts
- IRS Form W-9

2. **EMPLOYER IDENTIFICATION:** In order to be considered for this contract, the applicant must complete the Federal Tax Form W-9 enclosed as Attachment 5.
3. **IDENTITY OF INTEREST:** The applicant must identify all parties involved in the project and specify the nature and extent of involvement by each party.
4. **ORGANIZATIONAL, MANAGEMENT AND QUALIFICATIONS CAPACITY:** The applicant must describe the organization's background and experience with older adults, long-term services and service providers, and the aging network. The applicant should include specific examples of research or program evaluation it has implemented in any of these areas in the past. The applicant must provide information on the individuals who will participate in this project such as background and qualifications, including knowledge of appropriate systems, regulations, and policies. Include job descriptions and the estimated percentage of time each individual will spend on this project. The applicant must include an organizational chart.
5. **METHODOLOGY:** The applicant must describe the manner in which the project will be carried out in order to produce the outcomes described in Section IV of this Request for Proposals.
6. **WORKPLAN/GANTT CHART.** The applicant must provide a detailed work schedule (timeline) for the project and all the deliverables. The work schedule should be delivered as a Gantt chart, where appropriate, showing all major work tasks and milestones. The schedule should clearly demonstrate how the work will be fully completed and include turn-around times.
7. **BUDGET and BUDGET NARRATIVE:** The applicant must include a budget for the project based on the performance requirements. The budget presentation must clearly identify the budget for each deliverable separately (except that one budget may be developed for both the draft final and final report). The budget should include salaries of the individuals participating in the project, equipment needed if any, printing costs, and travel expenses for project staff. Those responding to this Request for Proposals are reminded that Federal and State Excise Taxes are not to be included in the budget as the State of Ohio is exempt from all such taxes. Further, respondents are reminded that no more than 10% of the total budget may consist of indirect costs levied by the sponsoring organization. **A separate budget must be proposed for each of the five research areas detailed in Section IV of this Request for Proposals. One combined budget must be shown for the sixth and seventh deliverables (the draft final report and the final report). In addition, a separate line item budget should be proposed for each of the two fiscal years of the evaluation (SFY 2006 and SFY 2007).**
8. **COMMITMENT OF RESOURCES:** The applicant must include a description of any other resources beyond ODA funds which will be employed in this effort.

10. **CONTRACT AWARD:** The applicant must include with this RFP, two (2) signed copies of the contract at page 39 and submit them with the proposal.

11. **ADDITIONAL INFORMATION NEEDED:** Please specify additional information or items needed, if any, from ODA in order to carry out the requirements of this proposal.

## **VIII. Proposal Review Criteria**

Proposals will be evaluated by a five (5) member committee selected by the Ohio Department of Aging who are knowledgeable in the provision of long-term services and supports.

ODA will review all Proposals for their format and completeness. ODA will normally reject any incomplete Proposal, although it may elect to waive any defects or allow an applicant to submit a correction. ODA will forward all timely, complete, and properly formatted Proposals to the evaluation committee.

At any time, ODA and its evaluation committee reserve the right to reject any and all proposals received in response to this announcement, and to request additional materials or clarification from any or all applicants. The evaluation committee may waive minor defects which are immaterial when no prejudice will result to the rights of any other applicant.

ODA is not liable for any costs associated with the preparation of any applicant's proposal.

Each proposal submitted in accordance with the provisions of this Request for Proposals shall be reviewed by the committee based on the proposal's completeness, responsiveness, and feasibility of implementation using the following criteria. Proposals will be scored using a range of values i.e. from low to high as listed within the Table in this section.

The evaluation will result in a point total being calculated for each Proposal. Those applicants submitting the highest ranked Proposals may be scheduled for a next phase. The number of Proposals forwarded to the next phase will be within the committee's discretion, but regardless of the number of Proposals selected for the next phase, they will always be the highest ranked Proposals from this phase.

The next phase will include scoring and detailed discussion pertaining to the top ranked proposals. If there are no more phases, because the committee feels they are unnecessary or inappropriate, the proposal providing the best value to the State will be awarded the Contract.

**Performance Bonus for Early Completion.** ODA will pay the Contractor a performance bonus of \$100 per day for each day that the Contractor submits the final deliverable of this evaluation prior to June 1, 2007.

**Contract Negotiations.** The final phase of the evaluation process may be contract negotiations. Negotiations will be scheduled at the convenience of the committee. The selected applicant must negotiate in good faith.

Negotiations may be conducted with any applicant who submits a competitive Proposal, but the committee may limit discussions to specific aspects of the RFP. Any clarifications, corrections, or negotiated revisions that may occur during the negotiations

phase will be reduced to writing and incorporated in the RFP or the applicant's proposal, as appropriate. Any applicant whose Proposal continues to be competitive will be accorded fair and equal treatment with respect to any clarification, correction, or revision of the RFP and will be given the opportunity to negotiate revisions to its Proposal based on the amended RFP. But should the evaluation process have resulted in a top-ranked Proposal, the committee may limit negotiations to only that applicant and not hold negotiations with any lower-ranking applicant. If negotiations are unsuccessful with the top-ranked applicant, the committee may then go down the line of remaining applicants, according to rank, and negotiate with the next highest-ranking applicant. Lower ranking applicants do not have a right to participate in negotiations conducted in such a manner.

If the committee decides to negotiate with all the remaining applicants, or decides that negotiations with the top-ranked applicant are not satisfactory and negotiates with one or more of the lower-ranking applicants, the committee will then determine if an adjustment in the ranking of the remaining applicants is appropriate based on the negotiations. The Contract award, if any, may then be based on the final ranking of applicants, as adjusted.

If best and final Proposals are required, they may be submitted only once; unless the committee makes a written determination that it is in the State's interest to conduct additional negotiations. In such cases, the committee may require another submission of best and final Proposals. Otherwise, discussion of or changes in the best and final Proposals will not be allowed. If an applicant does not submit a best and final Proposal, the applicant's previous Proposal will be considered the applicant's best and final Proposal.

It is entirely within the discretion of the committee whether to permit negotiations. An applicant must not submit a Proposal assuming that there will be an opportunity to negotiate any aspect of the Proposal. The committee is free to limit negotiations to particular aspects of any Proposal, to limit the applicants with whom the committee wants to negotiate, or to dispense with negotiations entirely.

The evaluation committee generally will not rank negotiations. The negotiations will normally be held to correct deficiencies in the preferred applicant's Proposal. If negotiations fail with the preferred applicant, the committee may negotiate with the next applicant in ranking. Alternatively, the committee may decide that it is in the interests of the State to negotiate with all the remaining applicants to determine if negotiations lead to an adjustment in the ranking of the remaining applicants.

From the opening of the Proposals to the award of the Contract, everyone working on behalf of the State to evaluate the Proposals will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. They will also seek to keep this information away from other applicants, and the evaluation committee will not be allowed to tell one applicant about the contents of another applicant's Proposal in order to gain a negotiating advantage.

Before the award of the Contract or cancellation of the RFP, any applicant that seeks to gain access to the contents of another applicant’s Proposal for whatever reason may be disqualified from further consideration. The negotiated changes to the successful offer will become a part of the Contract.

**Failure to Negotiate.** If an applicant fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations with that applicant.

The committee will rate the Proposals submitted in response to this RFP based on the following criteria and weight assigned to each criterion.

<b>Evaluation Criteria</b>	<b>Weight</b>
Understanding of PASSPORT and HCBS Medicaid waiver programs	10%
Organizational Experience & Management Qualifications	20%
Methodological Approach & Implementation	50%
Work Schedule	10%
Budget Narrative & Budget	10%
<b>Total</b>	<b>100%</b>

The evaluation criteria percentages are based on “Exceeds” points.

<b>Evaluation Criteria</b>	<b>Does not Meet</b>	<b>Meets</b>	<b>Exceeds</b>	<b>Greatly Exceeds</b>
<b>Understanding of Concept</b>				
Understanding of 1915c Medicaid waiver programs (HCBS waivers)	0	50	70	90
Understanding of Ohio’s long-term services and supports	0	30	42	54
Understanding of the structure of Ohio’s aging network	0	30	42	54
Understanding of PASSPORT	0	50	70	90

<b>Evaluation Criteria</b>	<b>Does not Meet</b>	<b>Meets</b>	<b>Exceeds</b>	<b>Greatly Exceeds</b>
<b>Organizational Experience &amp; Management Qualifications</b>				
Proven experience as a prime contractor to conduct in-depth research.	0	50	70	90
Applicant has successfully organized	0	50	70	90

projects similar in size and scope to that requested in this RFP. <b>Please include three project references.</b>				
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**Each of the five research areas identified in Section IV of this Request for Proposals is scored separately using the following criteria.** The score for each research area will be averaged to determine an overall score for methodological approach.

<b>Evaluation Criteria</b>	<b>Does not Meet</b>	<b>Meets</b>	<b>Exceeds</b>	<b>Greatly Exceeds</b>
<b>Methodological Approach &amp; Implementation</b>				
The extent to which the proposed approach achieves the project objectives and deliverables	0	50	70	90
The extent to which the proposed methodology can be integrated/correlated with PASSPORT	0	50	70	90
Likelihood that the methodology will be carried out as planned	0	50	70	90
Coherence and clarity of methodology	0	50	70	90

<b>Evaluation Criteria</b>	<b>Does not Meet</b>	<b>Meets</b>	<b>Exceeds</b>	<b>Greatly Exceeds</b>
<b>Work Schedule</b>	0	50	70	90

<b>Evaluation Criteria</b>	<b>Does not Meet</b>	<b>Meets</b>	<b>Exceeds</b>	<b>Greatly Exceeds</b>
<b>Budget &amp; Budget Narrative</b>				
Budget Narrative provides concise detail about each line item.	0	50	70	90
A separate budget exists for each of the five research areas identified in Section IV of this Request for Proposals	0	50	70	90
The budget narrative demonstrates sufficient commitment of human and financial resources by the contractor and subcontractor(s) to successfully complete the project.	0	50	70	90
Budget shows an accurate distribution of funds between SFY 2006 and 2007..	0	30	42	54
The budget amount is adequate to fund the project.	0	50	70	90

## **Cost Evaluation.**

Once the merits of the Proposals are considered, the State may consider the costs of one or more of the highest-ranking Proposals. But it is within the State's discretion to wait until after any interviews, presentations, and discussions to evaluate costs. Also, before evaluating the merits of the Proposals, the State may do an initial review of costs to determine if any Proposals should be rejected because of excessive cost. And the State may reconsider the excessiveness of any Proposal's cost at anytime in the evaluation process. The award will be based on a scoring ratio of 70:30 with 70 percent referring to the Proposal merits and 30 percent referring to cost.

To ensure the scoring ratio is maintained, the State will use the following formulas to adjust the points awarded to each Proposal

The Proposal with the highest point total for merit will receive 700 points. The remaining Proposals will receive a percentage of the maximum points available based upon the following formula.

Proposal Merit Points = Proposal Points / Highest Number of Proposal Points Obtained) X 700

The Proposal with the lowest proposed Not-To-Exceed Fixed Price will receive 300 points. The remaining Proposals will receive a percentage of the maximum cost points available based upon the following formula.

Cost Proposal Points = (Lowest Not-To-Exceed Fixed Price / Proposal's Not-To-Exceed Fixed Price) X 300

Total Points Score: The total points score is calculated using the following formula:

Total Points = Proposal Merit Points + Cost Proposal Points

If the State finds that it should give one or more of the highest-ranking Proposals further consideration, the State may move the selected Proposals to the next phase. The State alternatively may choose to bypass any or all subsequent phases and make an award based solely on its scoring of the preceding phases, subject only to its review of the highest-ranking Proposal.

## IX. CONTRACT AWARD

**Contract Award.** The State plans to award the Contract for the Project on February 3, 2006 if the State decides the Project is in its best interests and has not changed the award date.

The Applicant must include with this RFP, two (2) signed copies of this contract and submit them with the proposal. In awarding the Contract, the State will issue an award letter to the selected Contractor. The Contract will not be binding on the State until the State's duly authorized representative signs both copies and returns one to the Contractor, the State issues a purchase order and all other prerequisites identified in the Contract have occurred.

The State expects the Contractor to commence work within five working days after the State awards the Contract.

**Contract.** If this RFP results in a Contract award, the Contract will consist of this RFP, written amendments to this RFP, the Contractor's Proposal, and written, authorized amendments to the Contractor's Proposal. It will also include any materials incorporated by reference in the above documents and change orders issued under the Contract. The form of the Contract is attached as a one-page attachment to this RFP, but it incorporates all the documents identified above. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

- This RFP, as amended;
- The documents and materials incorporated by reference in the RFP;
- The Contractor's proposal, as amended, clarified, and accepted by the state; and
- The documents and materials incorporated by reference in the Contractor's Proposal.

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

**A CONTRACT BETWEEN  
THE OHIO DEPARTMENT OF AGING  
AND**

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(CONTRACTOR)

**THIS CONTRACT, which results from RFP Number: 06-121605 entitled Evaluation Of Ohio's Preadmission Screening System Providing Options And Resources Today (PASSPORT) is between the State of Ohio, Ohio Department of Aging (the "State") and**

\_\_\_\_\_ (the "Contractor").

If this RFP results in a contract award, the contract will consist of this RFP including all attachments, written amendments to this RFP, the contractor's proposal, and written, authorized amendments to the contractor's proposal. It will also include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the contract. The form of the contract is this one page attachment to the RFP, which incorporates by reference all the documents identified above. The general terms and conditions for the contract are contained in another attachment to the RFP. If there are conflicting provisions between the documents that make up the contract, the order of precedence for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The contractor's proposal, as amended, clarified, and accepted by the state; and
4. The documents and materials incorporated by reference in the contractor's proposal.

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

This contract has an effective date of the later of \_\_\_\_\_, 20\_\_\_\_, or the occurrence of all conditions precedent specified in the General Terms and Conditions.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the dates below.

CONTRACTOR

STATE OF OHIO  
Ohio Department of Aging

\_\_\_\_\_  
By:

\_\_\_\_\_  
By: Merle Grace Kearns

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

Director, Department of Aging

Date:\_\_\_\_\_

Date:\_\_\_\_\_