

**REQUEST FOR PROPOSALS**

**RFP NUMBER: TUPCF001**  
**DATE ISSUED: September 27, 2001**  
**DATE DUE: October 29, 2001**

**The Tobacco Use Prevention and Control Foundation is requesting proposals for:**

**Media Campaign for Tobacco Use Prevention**

**This RFP consists of five (5) parts and six (6) Attachments, totaling 28 consecutively numbered pages.**

## **PART ONE: EXECUTIVE SUMMARY**

### **Purpose .**

This Ohio Tobacco Use Prevention and Control Foundation ("Foundation") is seeking a lead advertising agency that has the capability to manage a statewide campaign targeted toward the general public, youth, and minority and regional populations. This campaign is one part of a comprehensive, multifaceted program that has the goal of reducing youth and adult tobacco use in Ohio. The Foundation's efforts are built around objectives to reduce tobacco use by Ohioans, emphasizing reduction in the following groups:

- youth
- minorities
- regional populations
- pregnant women
- others who may be disproportionately affected by tobacco use

In addition to the general market campaign, the successful agency will be expected to manage (either in house or by subcontractor) the development of language-specific, culturally appropriate messages for Ohio's diverse communities. As the Foundation develops additional programs within the contract period the contractor may be asked to develop new and different messages to market these programs.

The result of this RFP process will be to identify an agency with capable staff that can put forward strong ideas while demonstrating and implementing the best plan to manage the creative development, production, media placement, public relations, and all of its team, subcontractors and vendors at a reasonable cost to the Foundation.

### **Background.**

Tobacco use has dramatically affected the citizens and the state of Ohio. As the leading cause of death in the United States and the state of Ohio, each year nearly 20,000 Ohioans die from tobacco use. In addition, an estimated 6,000 kids nationally pick up a cigarette for the first time, and 3,000 kids become habitual smokers every day. The negative health effects that result from this level of tobacco use lead to excessive healthcare and taxpayer cost, and a diminished quality of life for the millions of Ohioans addicted to tobacco products.

It is with these realities in mind that Senate Bill 192 was signed into law creating the Ohio Tobacco Use Prevention and Control Foundation. The Foundation is charged with developing a comprehensive tobacco control program of which a statewide media campaign is an integral part.

The full strategic plan is available on the Foundation's web site [www.tupcf.org](http://www.tupcf.org) along with this RFP.

### **Contract Term and Scope of Funding**

This contract is anticipated to be for a period of four years from December 1, 2001 through November 30, 2005. Annual performance measures must be met, and annual reviews will occur after the first year and each year thereafter. These reviews will determine whether the Contractor is meeting the goals of the campaign and abiding by the terms of the contract and should be recommended for continuation. If after the first year of the contract, or any anniversary date thereafter, the Contractor does not pass an annual performance review, the Foundation may elect to terminate the initial contract with 30 days written notice.

It is anticipated that the value of this contract will be \$50 million dollars over the four-year term. Funding for any year of the contract period may be adjusted to reflect changes in legislative appropriation, shift in programmatic objectives or Foundation earnings.

### **Calendar of Events.**

The schedule for the RFP is given below. The Foundation may change this schedule at anytime. If the Foundation changes the schedule before the Proposal due date, it will do so through an announcement on the web site [www.tupcf.org](http://www.tupcf.org). It is each prospective offeror's responsibility to check the Web site question and answer area for this RFP for current information regarding this RFP and its Calendar of Events.

#### **Dates:**

##### Firm Dates

RFP Issued:	Week of September 24, 2001
Inquiry Period Begins:	Monday, October 1, 2001
Potential Bidder's Conference	Tuesday, October 9, 2001
Inquiry Period Ends:	Wednesday, October 24, 2001
Proposal Due Date:	Monday October 29, 2001 5:00p.m. E.D.T.

##### Estimated Dates

Technical review of proposals	October 30, 2001
Committee scoring of written proposals	October 31 - November 1, 2001
Oral Presentation	Week of November 12, 2001
Award Date:	December 1, 2001
Contract approval date	December 7, 2001
Launch date:	Early January 2002

## **PART TWO: STRUCTURE OF THIS RFP**

**Organization.** *There are five parts to the RFP and six attachments*

### **Parts**

- Part 1 Executive Summary
- Part 2 Structure of this RFP
- Part 3 General Instructions
- Part 4 Evaluations of Proposals
- Part 5 Contract Award

### **Attachments**

- Attachment 1 Work Requirements and Special Provisions
- Attachment 2 Requirements for Proposals
- Attachment 3 General Terms and Conditions
- Attachment 4 The Contract
- Attachment 5 Offeror References
- Attachment 6 Conflict of Interest certification

### **PART THREE: GENERAL INSTRUCTIONS**

The following sections provide details on how to get more information about this RFP and how to respond to this RFP. All responses must be complete and in the prescribed format.

**Contacts.** The following person ("Procurement Representative") will represent the Foundation during the Proposal process and the performance of the Work:

Procurement Representative:

Chuck Wolfe  
Ohio Department of Health  
246 N. High Street  
Columbus, Ohio 43215

During the performance of the Work, a Foundation representative ("Work Representative") will represent the Foundation and be the primary contact for matters relating to the Work. The Work Representative will be designated in writing after the Contract award.

#### **Communication regarding this RFP and the selection process.**

**Internet Inquiries.** Offerors may make inquiries regarding this RFP any time during the inquiry period listed in the Calendar of Events. To make or view an inquiry, and view answers offerors must use the following Internet address: [www.tupcf.org](http://www.tupcf.org). Offerors submitting inquiries will not receive a personalized email response.

When an amendment to this RFP is necessary, the Foundation may extend the Proposal due date through a posting on the web site. Amendment announcements may be provided any time before 5:00 p.m. the day before the due date. It is the responsibility of each prospective offeror to check for announcements and other current information regarding this RFP.

The Foundation will try to respond to all inquiries within four (4) business days, excluding weekends and Foundation holidays. But the Foundation will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

**The Foundation is not responsible for the accuracy of any information regarding this RFP that was gathered through a source different from the inquiry process described in this RFP.**

**To ensure an even field for consideration, Contractors may not directly or indirectly contact members of the Foundation Board, their offices, their staffs, their consultants, members of the selection committee, their offices or their staffs, or government agencies that may have some connection to the Foundation. No attempt should be made to influence the selection process beyond what is outlined and called for in this RFP. Any contractor who has been found attempting to influence the selection process beyond the scope of the RFP will be immediately disqualified.**

**Proposal Submittal.** Each offeror must submit one original and nine copies of its proposal.

Proposals and media sample packages are due no later than Monday, October 29, 2001, at 5:00PM, Eastern Standard Time. Proposals must be submitted to:

J. Nick Baird, M.D.  
Director, Ohio Department of Health  
246 N. High St. 7<sup>th</sup> Floor  
Columbus, OH 43215

The Foundation may reject any Proposals or unsolicited Proposal amendments that are received after the deadline. An offeror that mails its Proposal must allow for adequate mailing time to ensure its timely receipt.

**The Foundation may reject any Proposal if the offeror takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the offeror's Proposal fails to meet any requirement of this RFP. The Foundation may also reject any Proposal that it believes is not in its interests to accept and may decide not to do business with any of the offerors responding to this RFP.**

All Proposals and other material submitted will become the property of the Foundation and may be returned only at the Foundation's option. Proprietary information should not be included in a Proposal or supporting materials because the Foundation will have the right to use any materials or ideas submitted in any Proposal without compensation to the offeror. Additionally, all Proposals will be open to the public after the Contract has been awarded.

The Foundation will retain all proposals or a copy of them, as part of the contract file for at least three years. After the retention period, the Foundation may return, destroy, or otherwise dispose of the Proposals or the copies at its option.

**Amendments to the RFP.** If the Foundation decides to revise this RFP before the Proposal due date, amendments will be announced over the Foundation's Web site question and answer area for this RFP and will be made available on the Web site to all prospective offerors.

**The Foundation will not be liable for any costs incurred by any offeror in responding to this RFP, even if the Foundation does not award a Contract through this process. The Foundation may decide not to award a Contract for the Work. It may also cancel this RFP and contract for the Work through some other process or by issuing another RFP.**

## PART FOUR: EVALUATION OF PROPOSALS

**Disclosure of Proposal Contents.** The Foundation will seek, but not guarantee, to keep the contents of all Proposals confidential until the Contract is awarded. The Foundation will also prepare a registry of Proposals containing the name and address of each offeror. The registry will be open for public inspection after the Proposals are opened.

**Rejection of Proposals** The Foundation may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, or that the Foundation believes is excessive in price or otherwise not in its interests to consider or to accept. In addition, the Foundation may cancel this RFP, reject all the Proposals, and seek to do the Work through a new RFP or other means.

**Evaluation of Proposals** The evaluation process may consist of up to five distinct phases:

- Stage 1. The Procurement Representative's Initial Review of preliminary eligibility requirements;
- Stage 2. The Evaluation Committee's Evaluation of the Proposals for agency capabilities;
- Stage 3. Oral presentations of final assignment;
- Stage 4. Review of Budget presentations;
- Stage 5. Negotiations

It is within the purview of the evaluation committee to decide whether any one of the above phases or additional phases is necessary.

**Clarifications & Corrections.** During the evaluation process, the Procurement Representative or the evaluation committee may request clarifications from any offeror under active consideration and may give any offeror the opportunity to correct defects in its Proposal if the Procurement Representative believes doing so does not result in an unfair advantage for the offeror and it is in the Foundation's interests.

**Initial Review.** The Procurement Representative will review all Proposals for their format and completeness. The Procurement Representative will reject any materially incomplete or incorrectly formatted Proposal. The Procurement Representative will forward all timely, complete, and properly formatted Proposals to an evaluation committee.

### **Committee Review of the Proposals**

The evaluation committee will evaluate and numerically score each Proposal that the Procurement Representative has forwarded to it. Proposals will be evaluated according to the criteria contained in the RFP. The evaluation will result in a point total being calculated for each Proposal. Those offerors submitting the highest rated proposals as determined by point totals will be scheduled for the 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 rated Proposals from the previous phase.

The evaluation committee will document all major decisions in writing and make these a part of the contract file along with the evaluation results for each Proposal considered.

The next phase will be the presentational interview (the Interview) phase. The presentation will be divided into two parts. During the first part, the offeror will be asked to provide an in-depth explanation of the work plan, project goals, and how verification of project milestones will be conducted. The offeror may also be asked to present and explain a previous example of work that is approximately the same size and scope of this project. The committee may ask for additional information at any time during this phase, which additional information may be used to evaluate offerors' proposal. During the second part of the Interview, the offeror will be asked to

discuss its cost model structures and best-cost planning. The committee requires that a financial officer be present to discuss the project's cost structuring.

**Proposal Evaluation Criteria.** In the Proposal evaluation phase, the committee will rate the Proposals submitted in response to this RFP based on the following criteria and weight assigned to each criterion:

Stage 1: Preliminary Eligibility Requirements (pass/fail)

1. Cover Page
2. Ohio Knowledge
3. Gross Billings
4. Conflict of Interest Certification

Stage 2: Agency Capabilities: (145 Points)

1. Executive Summary (10)
2. Agency Personnel (15)
3. Organization Chart (5)
4. References (5)
  - a. Review of checked references in final stages
5. Advertising Account History (25)
6. Evaluation Process (25)
7. Media Placement (15)
8. Case Histories (25)
9. Financial Records (15)
10. Tobacco policies (5)
  
11. Creative (30) points
  - a. TV advertising (8)
  - b. Radio advertising (7)
  - c. Print advertising (7)
  - d. Outdoor advertising (3)
  - e. Additional advertising/promotional material (5)

Stage 3:

**Presentational Interview Criteria.** The evaluation will result in a point total being calculated for each Proposal. Those offerors submitting the highest rated proposals as determined by point totals will be scheduled for the 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 rated Proposals from the previous phase. The Proposal evaluation committee will require the highest-ranking offerors to interview with the committee, make a presentation about their proposal, and demonstrate their products or services. Such presentations, demonstrations, and interviews provide an offeror with an opportunity to clarify its Proposals and to ensure a mutual understanding of the Proposal's content.

In the Presentational Interview phase, the committee will rate the offerors' presentations based on the following criteria and weight assigned to each criterion:

Stage 3: Presentation (150 Points)

1. Presentation
  - a. Recommendations
  - b. Campaign Logic model
2. Knowledge base
  - a. Tobacco
  - b. Ohio Knowledge
3. Examples of Previous Work

4. Integration of partners/subcontractors
5. Advertising creative
6. Community/Public Relations

#### Stage 4: Financial Presentation

This RFP asks for responses and submissions from offerors, most of which represent components of the above criteria. While each criterion represents only a part of the total basis for a decision to award the Contract to an offeror, a failure by an offeror to make a required submission or meet a mandatory requirement will normally result in a rejection of that Offeror's Proposal. The value assigned above to each criterion is only a comparison value used to determine which Proposal is the most advantageous to the Foundation in relation to the other Proposals that the Foundation received.

**Financial Ability.** Part of the Proposal evaluation criteria is the qualifications of the offeror, which includes as a component the offeror's financial ability to perform the Contract. This RFP will require the submission of financial records from all offerors.

The offeror's lead agencies must demonstrate gross annual billings of \$20,000,000 for each of the previous three fiscal years.

In evaluating an offeror's financial ability, the weight the committee assigns, if any, to that financial ability above the stated minimum will depend on whether the offeror's financial position is adequate or inadequate. That is, if the offeror's financial ability is adequate, the value assigned to the offeror's relative financial ability in relation to other offerors may or may not be significant, depending on the nature of the Work. But if the evaluation committee believes the offeror's financial ability is not adequate, that decision will be a fatal one for the offeror's Proposal, and the committee may reject the Proposal despite its other merits.

The evaluation committee may record any presentations, demonstrations, and interviews for any purpose the Foundation deems necessary.

**Contract Negotiations.** The final phase of the evaluation process is contract negotiations. Contract negotiations will be scheduled at the convenience of the committee. The selected offeror(s) must negotiate in good faith. If negotiations are unsuccessful with the top-ranked offeror, the committee may then go down the line of remaining offerors, according to rank, and negotiate with the next highest-ranking offeror.

Before the award of the Contract or cancellation of the RFP, any offeror that seeks to gain access to the contents of another offeror's Proposal may be disqualified from further consideration.

Negotiated changes will be reduced to writing and become a part of the contract file open to inspection to the public. The written changes will be drafted and signed by the Contractor and submitted to the evaluation committee within five business days. If the evaluation committee accepts the change, the Procurement Representative will give the offeror written notice of the committee's acceptance. The negotiated changes to the successful offer will become a part of the Contract.

### **PART FIVE: AWARD OF THE CONTRACT**

**Contract Award.** The Foundation plans to award the Contract on December 1, 2001.

The Contract is currently being completed and will be placed on the web site when finished. Prior to the final phase of the selection process, Contractors will be asked to certify their agreement with the contract.

In awarding the Contract, the Foundation will issue an award letter to the selected Contractor. The contractor will be required to sign the Contract and return the executed Contract to the Foundation within 5 business days of the date of the letter. The Contract will not be binding on the Foundation until the Foundation's duly authorized representative signs both copies and returns one to the Contractor, the Foundation issues a purchase order, and all other prerequisites identified in the Contract have occurred.

The Foundation expects the Contractors to be able to commence work within five (5) business days after the Foundation issues a purchase order under 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 any purchase orders and change orders issued under the Contract. If there are conflicting provisions between the documents that make up the Contract, the order of preference for the documents is as follows:

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

Notwithstanding the order listed above, purchase orders, 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 documents effecting the change will take precedence over anything else that is part of the Contract.

## ATTACHMENT ONE: WORK REQUIREMENTS AND SPECIAL PROVISIONS

**Scope of Work.** This RFP is issued with the intent to hire an advertising/communications agency to design and implement a media campaign. The intent of this campaign is to inform the target populations and eventually change behaviors regarding tobacco use. The objectives of the Foundation's communications campaign are to increase knowledge, shift attitudes and change behavior. Upon approval of work plans and estimates, the Contractor will be responsible for, but not limited to, the following components:

1. Conceptualize, develop, pre-test, produce, implement, evaluate (post-test) a comprehensive marketing campaign aimed at keeping the issue of tobacco use before the general public, in support of the goals and objectives of the Foundation.
2. Conceptualize, develop, pre-test, produce, implement, and evaluate (post-test) customized advertising campaigns to best reach pregnant women, high-risk minority and regional groups, youth, and others who may be disproportionately affected by tobacco use
3. Develop a plan to ensure that advertising content is consistent with and complementary to the Foundation's locally funded program activities. The plan should include how the agency will gather input from and collaborate with local health professionals and tobacco control advocates.
4. Develop and present the Foundation staff an annual strategic recommendation for the development of new and the incorporation of existing advertising (available through the CDC's Media Campaign Resource Center) and placement of media based on internal and external research.
5. Develop, pre-test, produce, and summarize the effectiveness of advertisements. Obtain the most cost effective buy-outs and talent agreements in cases when additional uses of advertisements and their components are anticipated (e.g., educational videos, curriculum materials), as approved in advance by the Foundation.
6. Provide copies of scientific studies, research, and calculations used to substantiate the facts used in advertisements.
7. Develop a cost effective media mix of television, radio, print, outdoor, and other advertising to best reach target populations.
8. Throughout the contract term, conduct research and market analysis to provide information about specific target audiences, market segmentation, most effective media placement, how to best position Foundation tobacco education advertising messages relative to other social marketing advertising campaigns, and the relative merit of selected messages and strategies.
9. Design and produce collateral promotional materials and public relations materials that support the Foundation priorities and local program needs.
10. Duplicate and distribute advertising materials to other Foundation funded programs and other local state and federal health promotion agencies and entities, as approved in advance by the contract manager or designee. Provide master copies of all new advertising materials produced to the CDC's Media Campaign Resource Center for Tobacco Control.
11. Provide masters of all approved advertising in videocassette, recording cassette and CD forms to the Foundation for the purpose of archiving.
12. Develop and implement procedures for annually evaluating the effectiveness of the advertising campaign, including the content and emphasis of its strategic components. The evaluation will assess awareness of the advertising and changes in the attitudes and behaviors of Ohio smokers and nonsmokers related to tobacco use as a result of exposure to the campaign. To ensure the objectivity and independence of the evaluation, the Contractor shall subcontract with a qualified research firm or research consultant to undertake the evaluation. The Foundation shall provide prior written approval of the evaluation subcontract prior to any work being performed. All reports, data, databases, and data systems resulting from the advertising evaluation shall be the property of the

Foundation. All drafts and reports for the evaluation shall be submitted directly to the Foundation. The contractor may receive concurrent copy of the final evaluation report. The contractor shall not preview the study results nor receive an advance copy of the evaluation report.

13. Provide complete documentation to the Foundation for use in preparing reports on the advertising campaign's implementation and outcomes.
14. Develop a management and monitoring plan for keeping the Foundation apprised of all campaign activities, personnel/subcontractors responsible for activities, and an evaluation of the effectiveness and cost efficiency of these activities. At a minimum, the contractor will provide monthly written activity reports and budget summaries to the Foundation, with additional reporting required at the discretion of the Foundation.
15. Develop and maintain an interactive web site, which will allow visitors to find out how to get involved in community anti-tobacco activities, learn about the impact of tobacco industry actions and tobacco use and other items as directed by the Foundation.

**Local Knowledge.** The Contractor will be expected to demonstrate a thorough knowledge of Ohio communities, the most advantageous ways for the Foundation to place media within Ohio, the history and traditions of tobacco within the state, an understanding of tobacco related policies in Ohio, the extent of tobacco use within the state and the traditions, norms, attitudes and behaviors of Ohioans regarding tobacco use.

## **ATTACHMENT TWO: REQUIREMENTS FOR PROPOSALS**

**Proposal Format.** The RFP process consists of five stages, each with a review component that will serve to narrow the field of eligible agencies throughout the process. This section contains the specific instructions for Stage 1, 2, and 3 and general instructions for stage 4 and 5. The selection committee does reserve the right to alter these stages should it become necessary. Any such changes will be placed on the web site.

### **Stage 1: Preliminary Eligibility Requirements. (Scoring = Pass/Fail)**

Stage 1 will identify those agencies that meet the basic requirements of the RFP. Agencies that provide 1 original and 9 copies of all the information requested below no later than October 29, 2001 at 5:00PM and meet the entire minimum specified requirements will qualify to continue in the proposal process. Written responses should be placed in the same order as the following outline:

- a. Cover page requirements – as shown in attachment five (5)
- b. Ohio knowledge. Provide documentation that the proposer has sufficient knowledge of Ohio's communities and the issue of tobacco in the state. Document how the proposer will maintain a presence in Ohio if awarded the contract. (1 page)
- c. Gross billings. Provide a statement that the agency had at least \$20 million in gross billings for fiscal years 2000. The statement should include the actual billings for each quarter of 2000 and the actual and projected quarterly billings for 2001. (1 page)
- d. Conflict of interest. Any agency contracting with the Foundation is required to provide a statement that its operation is not in the position to be involved in any exchange of information with the tobacco industry or with any agency working with the tobacco industry. The proposer must complete the attached Certificate of compliance. (Complete Attachment 6 and include in Stage 1 submission)

Preliminary eligibility requirement submissions will be reviewed based on these four components to determine whether individual agencies meet the most basic

requirements of the RFP. Only those agencies that pass each of the four components will advance to participate in Stage 2.

**Stage 2: Agency Capabilities. (Scoring 175 points possible)** Agencies that pass the preliminary eligibility requirements will have their submissions reviewed by the selection committee. Agencies must submit this information simultaneously to Stage 1 by 5:00PM on Monday October 29, 2001. Submissions should be in this order:

1. **Executive Summary.** On no more than five pages, describe how your agency will provide full service capability, including but not limited to: account service, creative staff, market research, advertising evaluation, public relations, media planners/buyers, production planning and execution, and expert advice on key trends and issues in advertising and social marketing. Describe the strengths of your organization, including historical accomplishments, account leadership and experience with outreach to minority communities and regional populations. From the agency's own understanding of the tobacco control challenge in Ohio describe what the Foundation needs from its marketing campaign. Explain how your organization will help achieve the goals of the Foundation and note any plans to meet obligations through subcontractors.
2. **Agency Personnel.** The proposer shall provide resumes of technical and professional staff who will be assigned to this account. No less than two employees/consultants/subcontractors per page. Include:
  - a. Name, title, and current office address.
  - b. Description of experience in advertising and/or related field, including number of years.
  - c. Current accounts assigned, length of time assigned and a description of duties, including level of responsibility.
  - d. Previously assigned accounts and duties within the past four years.
  - e. Education
3. **Organizational Chart.** The proposer shall provide an organizational chart of its company indicating location and anticipated supervisory responsibilities of management and staff assigned to this account. Note vacant staff positions and positions that would be created to handle the account. Also note any key staff whose primary location will be anywhere other than the Ohio office that will service this account. The chart must indicate any relationship to a parent company and subsidiaries.
4. **References.** Provide a minimum of three client references within the past three years whose needs were similar to the nature and scope of the services outlined in the Scope of Work. Include company name, full address, contact name title and telephone, description of service provided, effective date and duration of contract and amount of contract.
5. **Advertising Account History.** Provide a complete list of clients from 1998 to present with the following information:
  - a. Client's name, address and telephone number
  - b. Indicate the approximate size of each account in terms of annual billings. Accounts of \$1 million or more shall be rounded to the closest \$1 million. Accounts less than \$1 million shall be rounded to the closest \$100,000.
  - c. Indicate the status of each account as open or closed. State the starting date for all accounts and the ending date for closed accounts.

- d. Highlight any experience managing and coordinating a team of specialized subcontractors and/or consultants.
  - e. Highlight projects that were social marketing, public policy, issue or non profit campaigns.
6. Evaluation of Advertising. On no more than two pages, respond to the following requests:
- a. Describe experience and methodologies your agency (or your subcontractor or consultant) has used to evaluate the effectiveness of advertising campaigns overall and individual advertising strategies or creative.
  - b. Describe the size and credentials of your research, development, and evaluation department(s). Include in your description whether these functions are normally performed in house or by a subcontractor or consultant.
  - c. Describe method(s) previously used by the agency to analyze the content and emphasis of a campaign's strategic components. Include: whether work was performed in-house, by a subcontractor, by a vendor, or by a freelancer; steps normally taken to substantiate factual content of ads; and how substantiated facts are maintained by agency.
  - d. Include the name and address of the person or firm who is designated to review advertisements and substantiate their factual content for legal compliance.
  - e. Describe what procedures your agency uses to track, analyze, evaluate, and adjust media placement. Would in-house staff, subcontractor or vendor perform this function?
7. Media Placement. On no more than two pages, describe your agency's experience in media placement by addressing the following questions:
- a. What were the total media dollars placed in Ohio during the 12 months ending June 30, 2001, for spot TV (provide day-part splits), spot radio, regional/local magazines, newspaper, outdoor, transit, Internet and other media?
  - b. Is there any business entity other than the proposer that would be responsible for media purchases for this contract? For what media purchases would it be responsible?
  - c. What is your agency's history in obtaining bonus weight and PSA placements?
  - d. What is the size of your media planning/buying department in terms of personnel, number of clients and workload?
  - e. What is the agency's experience in minority and regional populations market placement?
8. Case Histories. On no more than 8 pages (4 per history), present details of two Ohio based campaigns that you are currently or have since 1998 been responsible for.
- a. Key facts from background market research analysis.
  - b. Budget, competition, organizational and environmental constraints.
  - c. Identification of target markets, including approximate size, age range, language, and culture/ethnicity.
  - d. Creative Strategy/positioning.
  - e. Involvement of minority community
  - f. How the campaign was evaluated and the results.
9. Financial Records. Financial records must be submitted in duplicate in a separate sealed envelope identified on the outside as financial records and proposer's name. Financial records submitted in this fashion will be kept confidential and will be destroyed following the scoring of this section. Each proposer must submit one of the following:
- a. Certified Financial statements in customary form for its last three years and quarterly reports to shareholders, if any, for the current fiscal year as required by the Securities and Exchange Commission; **OR**

- b. Financial statements for its last three years reviewed by an independent third party Certified Public Accountant (CPA) and quarterly reports to shareholders, if any, for the current fiscal year as required by the Securities and Exchange Commission; **OR**
  - c. Internal Revenue Service tax return records for its last three years and quarterly reports to shareholders, if any, as required by the Securities and Exchange Commission.
10. Tobacco Free Policies. Describe your agency's tobacco free policies. Explain your workplace rules on tobacco use, cessation, and insurance policies.
11. Creative Capabilities. After scoring the above sections the selection committee will determine which agencies should be reviewed for creative capability. Proposers will demonstrate their creative capabilities by submitting two copies of creative work as outlined below:
- a. Five (5) television and five (5) radio ads on a single half-inch VHS reel;
  - b. Five (5) print ads and five (5) outdoor ads (presented on 8.5x11" paper);
  - c. Three (3) additional items to illustrate the agency's creative strengths.

**Stages 3 and 4. Oral Presentations (scoring 150 points possible).**

Each agency that progresses to stage 4 will be asked to make a presentation to the selection committee during the week of November 12, 2001. Agencies will be asked to develop a written plan for an advertising campaign based upon a real challenge in Ohio's tobacco prevention effort. This plan should include the agency's recommended strategy going forward. Agencies will be given one and a half hours to present the details of this plan. (Ten Copies of the written document should be left behind for the committee.) Selection committee members will then have 30 minutes to ask questions about the presentation. Agencies should include the members of their team who will be responsible for implementing each part of their recommended strategy. Presentation of creative ideas should be limited to storyboards – no finished creative should be presented.

**Budget Summaries (scoring 50 points possible).**

During the oral presentation agencies should allocate time to present their budget recommendations. These recommendations should be made a part of the written plan and left behind with the committee. This budget summary should be based on \$50 million in over 4 years. Agencies invited to make oral presentations will be provided a specific format for submission of their proposed budget.

## ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS

### PART 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 product) 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 Foundation representatives and others necessary to ensure a thorough understanding of the Work and satisfactory performance. The Foundation 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 November 30, 2005. Annual performance measures must be met and an annual review will occur. These reviews will determine whether the Contractor is abiding by the terms of the contract and should be recommended for continuation. If after the first year of the contract the Contractor does not pass an annual performance review, the Foundation may elect to terminate the initial contract with 30 days written notice. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the Foundation paid for before termination or limit the Foundation's rights in such.

The Contractor must comply with all of 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 Foundation may terminate this Contract under the termination provision contained below. But the Foundation 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 Foundation'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 Foundation's failure to perform will be extended by the same amount of time as the Foundation's delay. The Contractor may not rely on this provision unless the Contractor has given the Foundation written notice of the Foundation's failure to meet its obligations, with reasonable specificity, within five (5) business days after the Foundation's delay has begun and while the Foundation's delay is happening. The extension of the Contractor's performance time will be the Contractor's only remedy for the Foundation's delay.

**Compensation.** In consideration of the Contractor's promises and satisfactory performance, the Foundation will pay the Contractor the amount(s) identified in the RFP (the "Fee"), 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 Foundation. 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 Foundation's then-current policies regarding invoices and their submission. The Foundation 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 Foundation 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 Foundation disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the Foundation will notify the Contractor, in writing, stating the grounds for the dispute. The Foundation may then deduct the disputed amount from its payment as a non-exclusive remedy. In addition, the Foundation 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 Foundation's satisfaction, the Foundation will pay the disputed amount within 30 business days after the matter is resolved. No interest will accrue, as no amount will actually be due on a disputed amount, until 30 days after the matter is resolved.

If the Foundation 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 Foundation for that amount at the end of the 30 calendar days as a non-exclusive remedy for the Foundation. On written request from the Contractor, the Foundation will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to the Foundation's facilities and any information the Foundation has regarding the problem.

**Reimbursable Expenses.** The Foundation will pay all reimbursable expenses identified in the RFP, if any, in accordance with the terms in the RFP and, where applicable, Section 126.31 of the Code.

In making any reimbursable expenditure, the Contractor will always comply with the more restrictive of its own, then-current internal policies for making such expenditures or with the Foundation's then-current policies. All reimbursable travel will require the advance approval of the Foundation's Representative. All reimbursable expenses will be billed monthly and paid by the Foundation within 30 days of receiving the Contractor's invoice.

**Responding Vendors will not be reimbursed for any materials presented to the Foundation. All information submitted to the Foundation shall become the property of the Foundation and will not be returned to the Responding Vendor.**

**Certification of Funds.** None of the rights, duties, or obligations in this Contract will be binding on the Foundation, and the Contractor will not begin its performance, until all the following conditions have been met: (a) all statutory provisions under the Code, including Section 126.07, have been met; (b) all necessary funds are made available by the appropriate Foundation agencies; (c) if required, approval of this Contract is given by the Controlling Board of Ohio; and (d) if the Foundation is relying on Federal or third-party funds for this Contract, the Foundation gives the Contractor written notice that such funds have been made available.

**Employment Taxes.** Each party will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings for its own personnel, including, but not limited to, Federal, state and local income taxes, social security, unemployment or disability deductions, withholdings, and/or payments (together with any interest and penalties not disputed with the appropriate taxing authority).

**Sales, Use, Excise, and Property Taxes.** The Foundation 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.

## PART TWO: WORK & CONTRACT ADMINISTRATION

**Subcontracting.** If the Foundation authorizes the use of subcontractors, that fact will be noted in the RFP or in a subsequent, written document. 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 hold the Foundation harmless for and will indemnify the Foundation against any such claims.

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 Foundation 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. And the Contractor will be fully responsible for any default by a subcontractor, just as if the Contractor itself had defaulted. Use of an unauthorized subcontractor by contractor shall be an item of default.

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 both the subcontractor and the Contractor are bound by them. Among such provisions are the limitations on the Contractor's remedies, the insurance requirements, conflict of interest certification, 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 Foundation in any way, the Contractor will indemnify the Foundation for the damage.

**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.

The Contractor will keep a separate account for the Work (the "Work Account"). All payments made from the Work Account will be only for obligations incurred in the performance of this Contract and will be supported by contracts, invoices, vouchers, and any other data needed to audit and verify the payments. All payments from the Work Account will be for obligations incurred only after the effective date of this Contract unless the Foundation has given specific written authorization for making prior payments from the Work Account.

**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 Foundation may at its own expense audit the Contractor's records and other materials that relate to the Work. This audit right will also apply to the Foundation'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 principle 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 need to access the records to the Contractor's office nearest Columbus whenever the Foundation 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, any misrepresentation, or any overcharge to the Foundation, the Foundation will be entitled to recover damages, as well as recover 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 Foundation in all solicitations and advertisements for employees that it is an equal opportunity employer.

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

- (a) Workers' compensation insurance, as required by Ohio law, and, if some of the Work will be done outside Ohio, the laws of the appropriate state(s) where the Work will be done.
- (b) The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- (c) Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one occurrence.

The Contractor will also furnish a certificate of insurance to the Foundation for the required coverages evidencing insurance from an insurance carrier, or carriers, authorized to do business in Ohio. The certificate must be in a form that is reasonably satisfactory to the Foundation as to the contents of the policies and the quality of the insurance carriers. The certificate must also:

- (a) Provide 30 days notice to the Foundation before cancellation.
- (b) Have an endorsement providing that the insurance is primary insurance and over any coverage held by the Foundation.
- (c) List the Foundation as an additional insured.

**Foundation 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 Foundation 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 are material factors in the Foundation'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 Foundation.

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

The Foundation has an interest in ensuring, and right to ensure, that the performance of the Work be carried out in an efficient, professional, legal, and secure manner. The Foundation, therefore, will have the right to require the Contractor to remove any individual doing any part of the Work if the Foundation determines that any such individual has or may interfere with the Foundation's interests. 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 Foundation 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 Foundation may also terminate this Contract if the Contractor violates any law or regulation in doing the Work, or if it appears to the Foundation that the Contractor's performance is substantially endangered through no fault of the Foundation. In any such case, the termination will be for cause, and the Foundation's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 30 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice or if the breach is not one that is curable, the Foundation will have the right to terminate this Contract. The Foundation may also terminate this Contract in the case of breaches that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the Foundation has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three times. After the third notice, the Foundation 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 30 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 Foundation may also terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Work. If a third party is providing funding for the Work, the Foundation may also terminate this Contract should that third party fail to release any Work funds. The RFP identifies any third party source of funds for the Work.

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 Foundation. The report must detail any Deliverables completed or partially completed but not delivered to the Foundation at the time of termination. The Contractor will also deliver all the

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

If the termination is for the convenience of the Foundation, the Contractor will be entitled to compensation for any Work that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined to be owing to the Contractor by the Foundation.

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

In the case of a suspension for the Foundation's convenience, the amount of compensation due to the Contractor for Work performed before the suspension will be determined in the same manner as provided in this section for termination for the Foundation's convenience. The Contractor will not be entitled to compensation for any costs associated with a suspension for the Foundation's convenience. No payment under this provision will be made to the Contractor until the Contractor submits a proper invoice.

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 Foundation and will resume the Work only on written notice from the Foundation to do so. In any case of suspension, the Foundation 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 Foundation, 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 Foundation will not suspend the Contract for its convenience more than once during the term of this Contract, and any suspension for the Foundation'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 Foundation's convenience at the end of the 30 calendar day period.

Any default by the Contractor or one of its authorized 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 Foundation for any liability to them. Each subcontractor will hold the Foundation 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 Foundation'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 to 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 must designate a Contract Manager as a representative. The Contract Manager will conduct all liaison with the Foundation under this Contract. Either party, upon written notice to the other party, may designate another representative.

**Work Responsibilities.** The Foundation will be responsible for providing only those things expressly identified, if any, in the RFP. If the Foundation 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 Foundation property are 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 Foundation property.

If the Work, or parts of it, will be performed on the Foundation's property, the Foundation 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, county, state, or Federal agency for the Work.

**Changes.** The Foundation may make reasonable changes, within the general scope of the Work, in any one or more of the following: (i) Work tasks or subtasks; (ii) time or place of delivery; or (iii) period of performance. The Foundation will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"). Additionally, if the Foundation provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the scope of the Work, the Contractor will have the right to request a Change Order from the Foundation. Scope of Work changes will be managed as follows: pricing will be provided from the Contractor to the Foundation. The Foundation will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the Work. Within five business days after receiving the Change Order, the Contractor will sign it to signify agreement with it and return it to the Foundation.

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

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

If the Contractor seeks an equitable adjustment in its Fee, the Contractor must submit its actual costs for materials needed for the change (or estimated amount if the precise amount of materials cannot be determined) and an estimate of the hours of labor required to do the Work under the Change Order. The hours of labor will be broken down by employee position, and the actual hourly pay rate for each employee involved in the change must be provided. The total amount of the equitable adjustment for the Change Order will then be made based on the actual cost of materials (or estimated materials) and actual rate for each person doing the labor (based on the estimated hours of work required to do the change). Labor rates will be increased by 25% to cover benefits and taxes. The equitable adjustment for the Change Order will then be set based on this amount, plus 15% to cover overhead and profit. Alternatively, if the Contractor's proposal provides for hourly rates for each position involved in the Change Order, then those rates will apply rather than the actual rates, and there will be no adjustment for benefits, taxes, overhead, or profit. This amount will be the not-to-exceed amount of the Change Order. However, if the change involves removing a requirement from the Work or replacing one part of the Work with the change, the Foundation will get a credit for the Work no longer required under the original scope of the Work. The credit will be calculated in the same manner as the Contractor's Fee for the change, and the not-to-exceed amount will be reduced by this credit.

The Contractor will be responsible for coordinating changes with its subcontractors and adjusting their compensation and performance schedule. The Foundation will not pay any subcontractor for the Change Order. If a subcontractor will perform any Work under a Change Order, that Work must be included in the Contractor's not-to-exceed amount and calculated in the same manner as the Contractor's equitable adjustment for the portion of the Work the Contractor will perform. The Contractor will not receive an overhead percentage for anything a subcontractor will do under a Change Order.

**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. 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.

**Independent Status of the Contractor.** The Contractor will be acting as an independent contractor and this Contract may not be construed to be a partnership or joint venture between Contractor and Foundation. 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 authorized subcontractors will be considered the agents of the Contractor for purposes of this Contract.

### **PART THREE: OWNERSHIP & HANDLING OF INTELLECTUAL PROPERTY & CONFIDENTIAL INFORMATION**

**Confidentiality.** Foundation may disclose to the Contractor written material or oral or other information that the Foundation treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the Foundation delivers to the Contractor will remain with the Foundation. The Contractor agrees to treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the Foundation, or individuals or organizations about whom the Foundation keeps information. By way of example and by no means by way of limitation, information should be treated as confidential if it includes police and investigative records, files containing personal information about individuals or employees of the Foundation, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to do the Work. The Contractor will restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Work. The Contractor will be liable for the disclosure of such information whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.

The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor's exercise of at least the same degree of care as it normally takes to preserve and safeguard its own secrets, except when the Contractor's procedures are not reasonable given the nature of the Confidential Information or where the disclosure nevertheless results in liability to the Foundation.

The Contractor will not incorporate any portion of any Confidential Information into anything, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor will cause all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) was already in the Contractor's possession before disclosure by the Foundation, and such was received by the Contractor without obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the Foundation; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the Foundation of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to the requirements of this section.

**Ownership of Deliverables.** All custom Work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the Foundation, with all rights, title, and interest in all intellectual property that come into existence through the Contractor's custom work being assigned to the Foundation. Additionally, the Contractor waives any author rights,

copyrights, and similar retained interests in custom-developed material. The Contractor will provide the Foundation with all assistance reasonably needed to vest such rights of ownership in the Foundation.

#### **PART 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; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the Foundation regarding conduct on any premises under the Foundation's control; and (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the Foundation.

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 or will refund the amount of the compensation paid for such portion of the Work or the applicable Deliverable. The Contractor will also indemnify the Foundation for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the Foundation has modified or misused the Deliverable and the claim is based on the modification or misuse. The Foundation 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 a 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 Foundation to use the infringing Deliverable as it was intended for the Foundation to use under this Contract; or (4) remove the Deliverable and refund the amount the Foundation 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 Foundation.

**Indemnity for Property Damage and Bodily Injury.** The Contractor will indemnify the Foundation for all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of the performance of this Contract, providing such bodily injury or property damage is due to the fault of the Contractor, its employees, agents, or subcontractors and occurs without negligence on the part of the Foundation or any of its employees.

**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. FURTHER, EXCEPT WITH RESPECT TO THIRD-PARTY CLAIMS OR JUDGEMENTS AGAINST ONE PARTY RESULTING FROM THE FAULT OR BREACH OF THIS CONTRACT BY THE OTHER PARTY, EACH PARTY'S LIABILITY FOR DAMAGES IS LIMITED TO ACTUAL LOSSES INCURRED UNDER THE CONTRACT, UP TO THE VALUE OF THE CONTRACT REGARDLESS OF THE CAUSE, THEORY, OR BASIS FOR SUCH LIABILITY.**

**DESPITE ANYTHING TO THE CONTRARY IN THIS CONTRACT, NEITHER PARTY'S LIABILITY FOR DAMAGES TO THE OTHER PARTY SHALL EXCEED THE TOTAL PRICE PAID OR TO BE PAID UNDER THIS CONTRACT.**

**Passage of Title.** Title to any Deliverable will pass to the Foundation 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 Foundation.

## **PART 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 Foundation 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.

## **PART 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.

**Availability of Funds.** All financial obligations of the Foundation under this contract are subject to appropriation and/or availability of sufficient funds. If at any time sufficient funds are not appropriated and/or available to continue funding the payments due under this contract, this contract shall terminate on the date on which the Foundation issues a written final determination to Contractor that such funds are unavailable and/or not appropriated.

**Ohio Preference.** Whenever possible, Contractor agrees to demonstrate a preference for goods and services available in the state of Ohio, but Contractor will not be limited to the use of said goods and services if such use will significantly increase the cost of the project.

**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 Foundation property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

**Conflicts of Interest.** Every person who has responsibilities related to this Contract or the Work must sign a Conflict of Interest Compliance Certificate, in the form attached hereto as Attachment two(2), and a signed original must be provided to Foundation before that person commences work on the Contract or the Work.

**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 Foundation'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 Foundation.

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

**ATTACHMENT FOUR: THE CONTRACT**

**A CONTRACT BETWEEN  
The Tobacco Use Prevention and Control Foundation of Ohio  
AND**

\_\_\_\_\_  
**(CONTRACTOR)**

**THIS CONTRACT, which results from RFP TUPCF001** is between  
The Tobacco Use Prevention and Control Foundation of Ohio, (the "Foundation") and  
\_\_\_\_\_  
"Contractor"). (the

The contract consists 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, 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 preference for the documents is as follows:

1. This RFP, **TUPCF001**, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The contractor's proposal, as amended; and
4. The documents and materials incorporated by reference in the contractor's proposal.

Notwithstanding the order listed above, purchase orders, 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 December 7, 2001, 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 Tobacco Use Prevention and Control Foundation

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

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

Title:

Title:

Date:

Date:

**ATTACHMENT FIVE: COVER LETTER CONTENTS**

Cover Letter Page Contents

Full Legal name of proposer's company  
Mailing Address  
City, State, Zip  
Phone  
Fax  
Email

Federal Taxpayer ID #

Status of Contractor proposing to do business:

Individual                      General Partnership                      Limited Partnership                      Corporation

- a. Individual: state true name of sole proprietor \_\_\_\_\_
- b. Partnership: if a partnership, list each partner, including limited partners, stating his or her true name and interest in the partnership
- c. Corporation: place and date incorporated \_\_\_\_\_ date corporation was authorized to do business in Ohio \_\_\_\_\_
  - President: \_\_\_\_\_
  - Vice President: \_\_\_\_\_
  - Secretary: \_\_\_\_\_
  - Treasurer: \_\_\_\_\_
  - Other Officers (Executive Officer, etc.) \_\_\_\_\_

The undersigned hereby affirms that:

The proposer has reviewed and accepts the contract provisions found in the RFP and on the Foundation's web site;

The statements contained in submissions made throughout the proposal are true and complete;

The proposer accepts the obligation to comply with the applicable state and federal requirements, policies, standards and regulations; and

The proposer recognizes that all non-financial submissions made throughout the proposal process become public documents and open to public inspection.

Signed  
Date  
Title

Contact person during proposal process:  
Name, phone number, email address

**ATTACHMENT SIX: CONFLICT OF INTEREST COMPLIANCE CERTIFICATE**

The Tobacco Use Prevention and Control Foundation ("Foundation") intends to avoid conflicts of interest or the appearance of conflicts of interest on the part of the Contractor, subcontractors, or officers, and directors of the Contractor or subcontractors. Thus, the Foundation reserves the right to determine at its sole discretion, whether any information received from any source indicates the existence of a conflict of interest.

Either of the following instances shall be considered a conflict of interest:

- A. An instance (since November 1998) where the proposer/Contractor or any of its subcontractors, or any officer, or director of the proposer, Contractor or any subcontractors has the responsibility for the strategy, development, media purchasing, or media planning for the Foundation's media campaigns and has had a direct or substantial contractual or corporate responsibility to promote, or assist in the promotion of, the use of, or the sale of tobacco products for a company involved in, or company with a subsidiary involved in, the production, distribution, or marketing of tobacco products.
- B. An instance where the proposer/Contractor or any of its subcontractors, or any officer, or director holds a position of interest, financial or otherwise, which would allow use or disclosure of information obtained from performing services for the Foundation for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Foundation.

Contractor and any subcontractor shall notify Foundation within ten (10) business days of any change to the information provided in this Certificate. If Foundation determines Contractor has a conflict of interest, then the Contract may be terminated at the discretion of Foundation. If Foundation determines after award of the Contract that a subcontractor has a conflict of interest, then Foundation may at its discretion terminate this Contract or Foundation may require Contractor to remove that subcontractor from the Work and to provide replacement personnel, as provided in the Contract.

If the Foundation is aware of a known or suspected conflict of interest, the proposer or contractor will be given an opportunity to submit additional information or to resolve the conflict. A proposer or contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by the Foundation to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by the Foundation and cannot be resolved to the satisfaction of the Foundation, before or after the award of the Contract, the conflict will be grounds for rejection of the proposal and termination of the Contract.

The proposer shall include in Stage 1 of the RFP process this certificate containing the original signature of an official or employee of the proposer who is authorized to bind the proposer as well as completed certificates from proposed subcontractors.

This certificate will be incorporated into the Contract, if any, awarded from this RFP. Contractor shall obtain a completed certificate from any future subcontractor and submit it to the Foundation prior to the subcontractor commencing work on this media campaign.

Authorized representative signature: \_\_\_\_\_  
For (organization Name) \_\_\_\_\_

Printed name: \_\_\_\_\_  
Organization Name: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_