

**OREGON OFFICE OF ENERGY**  
**Request For Proposal #03-09**  
**COMMISSIONING SERVICES FOR SCHOOLS**

**ISSUED: October 10, 2002      FIRST EVALUATION: November 11 , 2002**

**(NOTE: The first evaluation will begin on Tuesday, November 12, 2002. This is an ongoing RFP and all proposals will be reviewed periodically regardless of arrival date until further notice.)**

**Introduction**

Senate Bill 1149 (SB 1149) was enacted by the 1999 Oregon Legislature to introduce competition into the electricity market of Oregon's two largest utilities, Portland General Electric and PacifiCorp. Section 3 of SB 1149 establishes a public purpose charge of three percent (3%) of the total revenues collected by each electric company from all of the retail electric customers within its service area for a period of ten years. Section 3 also directs that the first ten percent (10%) of the public purpose charge collected annually be distributed to education service districts located within the service territory of the electric company. Public purpose funds from SB 1149 will provide approximately \$6 million annually for ten (10) years to fund energy efficiency improvements in Oregon public schools in Portland General Electric and PacifiCorp service territories.

The bill directs school districts to implement cost-effective energy efficiency measures identified through energy audits. The SB 1149 Program Guidelines state that certain energy efficiency measures or projects costing more than \$50,000 must be "commissioned." Commissioning is the systematic process of ensuring that heating, ventilating, air-conditioning, lighting, and other building systems perform according to the design intent and owner's needs.

The State of Oregon, acting by and through the Oregon Office of Energy ("Office of Energy") seeks proposals for commissioning services from qualified firms or individuals for school construction projects that were implemented in accordance with SB 1149 and are cost-effective energy efficiency measures identified through energy audits. The successful firm(s) or individual(s) will contract directly with the education service districts, school districts, or the Office of Energy and will work cooperatively with school boards, their designated representatives, design professionals, and the construction managers.

The areas of expertise required to perform commissioning services identified in this RFP include, but are not limited to, the following:

- Chilled water system (chillers, cooling towers, pumps, condensers, piping, valves)
- Hot water system (boilers, hot water pumps, valves, piping)
- Steam distribution systems (boilers, piping, hot well, steam traps, condensate pumps)
- Air handling units (supply fans, return fans, coils, valves, variable frequency drives (VFD), ducts, dampers, filters)
- Packaged air conditioning (AC) or heat pump (HP) units (supply fans, return fans, coils, valves, VFD, ducts, dampers, filters, compressors, condensers)
- Terminal units
- Unit heaters
- Heat recovery system (coils and pumps)
- Domestic water system (heaters, valves)
- Building automation system (controls - pneumatic, electric, and direct digital)
- Lighting controls (light sweep and daylight dimming)
- Testing and Balancing

The equipment and systems listed above will be referred to either individually or collectively as "Equipment/Systems."

The Office of Energy plans to establish a statewide pool of qualified commissioning providers in order to obtain a greater range of availability and expertise for Oregon schools contracting for commissioning services. Interested firms or individuals that specialize in these types of commissioning services are encouraged to submit proposals.

As a result of this RFP, qualified firms and individuals may enter into an “Agreement to Agree” with the Office of Energy. (See Attachment A for sample Agreement to Agree.) This pool of qualified commissioning providers will be available to contract with education service districts, school districts, and the Office of Energy for the services authorized in this RFP. The Agreement to Agree sets forth the terms and conditions under which an education service district, school district, or the Office of Energy and qualified commissioning provider may contract to perform specific work requested in the Contractor Work Assignment. Contracts entered into under an Agreement to Agree will be established by execution of a Contractor Work Assignment issued by an education service district, school district, or the Office of Energy. The contracting education service district, school district, or the Office of Energy as the contracting party, shall be referred to as the “Contracting Agency,” and the resulting contract shall be referred to as the “Work Assignment Contract.” To select a commissioning provider, a Contracting Agency may negotiate with or solicit quotes from one or more commissioning providers qualified under this RFP. Nothing in this solicitation process, Request for Proposal, or any contemplated or final Work Assignment Contract relieves any Contracting Agency from complying with all laws and regulations applicable to the Work Assignment Contracts.

### **Notice**

Proposers are responsible for carefully reading all the terms and conditions contained in this Request for Proposal (RFP) and for following the instructions given. Proposals that do not contain all the information requested may be rejected as non-responsive.

Funding for commissioning is obtained from the SB 1149 public purpose charge. Therefore, the actual amount available for Work Assignment Contracts resulting under this RFP is unknown. However, it is anticipated that each of the potential 600 energy studies will identify three (3) to fifteen energy efficiency projects (for a total of 1,800 to 9,000 projects) that will require commissioning. The Office of Energy anticipates that the majority of the projects will need to be commissioned within the first four (4) years of the program. It is anticipated that the minimum amount available for all Work Assignment Contracts resulting under this RFP over the next four (4) years will be approximately \$2,000,000, with the maximum amount estimated to be up to \$8,000,000, depending upon such factors as available funding, program authorization, and volume of Contracting Agency demand for services.

The Office of Energy estimates that individual Work Assignment Contract amounts may range from \$10,000 to \$85,000 over the term of the Work Assignment Contract(s). Each Work Assignment Contract will stipulate a maximum Work Assignment Contract amount. However, contractors are not guaranteed any particular volume or dollar amount of work.

### **Scope of Work**

A Contracting Agency will directly contact a commissioning provider to request work as needed. Requests for work will be made by means of a Contractor Work Assignment containing a statement of work within the scope of the work described below. Contractor Work Assignments will vary according to the contractor’s qualifications and the specific project for which the contractor is providing services but all work must be within the scope of work described below. A fully executed Contractor Work Assignment incorporates all terms and conditions and other requirements identified in the Agreement to Agree and will result in a Work Assignment Contract. The Contractor Work Assignment form is attached as Attachment 2 to the Agreement to Agree (Attachment A of this RFP).

A. General responsibilities include:

1. Primary responsibility for commissioning the project, including all services delineated under the Basic Services required in Section B, below.
2. Provide the Contracting Agency an unbiased, objective report of the Equipment/Systems: installation, documentation, operation and performance.
3. Preparation of commissioning specifications relating to the commissioning of all Equipment/Systems in the construction bid specifications and as determined and requested by the Contracting Agency.
4. Preparation of reports for commissioned Equipment/Systems.
5. Coordination of services to accomplish commissioning objectives. The framework for the scope of services for all parties involved in the commissioning of the building shall, unless otherwise provided in or inconsistent with the requirements of this RFP, adhere to the definitions, requirements, and scope delineation outlined in the following publication which is incorporated herein by this reference:

**The Building Commissioning Handbook**  
**By: John A. Heinz, P.E. and Richard A. Casault, P.E.**  
**ISBN 0-913359-92-0, Item A704, Copyright 1996**

The Building Commissioning Handbook is available from the Association of Higher Education Facilities Officers' (APPA) online bookstore at [www.appa.org](http://www.appa.org).

Also recommended: **Commissioning Tool Kit - Oregon Office of Energy**  
**New Construction Commissioning Handbook for Facility Managers**  
**Retrocommissioning Handbook for Facility Managers**

The above publications are available for download at:  
<http://www.energy.state.or.us/bus/comm/bldgcx.html>

B. Basic Services. The commissioning provider, at a minimum, shall be responsible for the following services:

1. Provide the Contracting Agency a written comparison of the energy audit report identifying the energy efficiency measures being implemented and the preliminary construction bid documents created for implementation of those energy efficiency measures. The comparison shall detail the discrepancies that exist between the energy audit and the preliminary construction bid documents. The report should compare not only Equipment/Systems specifications to the recommended Equipment/Systems in the applicable energy audit but should also include Equipment/System usage or strategy (e.g., control strategies) differences between the energy audit and the preliminary construction bid documents.

2. The commissioning provider shall review the preliminary construction bid documents created for implementing energy efficiency measures identified in the applicable energy audit and provide written comments to the design professional pertaining to the contract requirements that affect all the parties involved in the construction process (construction manager, general contractor, construction contractors (and any subcontractors) and that are participating in commissioning, as well as any items that would aid in the proper commissioning of the Equipment/Systems. When necessary the commissioning provider shall develop and provide appropriate specification sections for inclusion into the construction bid documents. The commissioning provider shall attend a contract documents review session to present and discuss comments prior to the issuance of the final construction bid documents.
3. Write the Commissioning Plan. The commissioning plan shall identify the following items for each test: a) Function to be tested (e.g., calibration, economizer control, etc.); b) Condition under which the test shall be performed (e.g., winter design conditions, full outside air, etc.); c) Measurable criteria for acceptable results. The commissioning provider shall submit the Commissioning Plan to the Contracting Agency for review and approval by the design professional and Contracting Agency within 30 calendar days after the final construction bid documents have been issued. The Commissioning Plan shall include a detailed description and schedule of all commissioning activities.
4. Submit a Commissioning Schedule (e.g., scheduling of meetings, document due dates, and testing dates) to the Contracting Agency for review and approval by the design professional and Contracting Agency within 30 calendar days of the Commissioning Plan approval by the Contracting Agency.
5. Meet with the Contracting Agency, design team, general contractor, and subcontractors to describe commissioning and to discuss individual roles and responsibilities for completing the commissioning process as specified in the Commissioning Plan and construction bid specifications. In addition, schedule regular commissioning progress meetings with all participants.
6. Facilitate the integration of the commissioning process into the overall construction schedule.
7. Review Equipment/Systems submittals for commissioning related issues.
8. Submit a Start-up Plan to the Contracting Agency that establishes Equipment/Systems formal start-up criteria and procedures. For Equipment/Systems identified in the energy audit, and for which formal start-up is required, coordinate start-up with the general contractor and its subcontractors. Submit a Start-Up Plan for Contracting Agency's approval. The Start-Up Plan should include a list of firms and individuals required to participate, and detailed start-up data forms as set forth in the Building Commissioning Handbook for complete documentation of the process. Monitor the start-up of all Equipment/Systems.

9. Provide the services of a qualified Test Engineer, who shall at a minimum:
  - a. Develop test procedures and forms for documentation as contemplated in the Building Commissioning Handbook to demonstrate that all Equipment/Systems tests and Functional Performance Testing (FTP) are performed completely and accurately and that the Equipment/Systems are operating correctly. FTP shall demonstrate the correct installation and operation of each equipment device, system and system-to-system inter-tie relations in accordance with approved plans and specifications. Test procedures shall be in accordance with the Equipment/systems manufacturer's recommendations, where applicable. Test procedures shall fully describe Equipment/Systems configuration and steps required for each test; appropriately documented so that another party can repeat the tests with virtually identical results.
  - b. In coordination with the construction contractors and the construction schedule, develop schedules for all testing and coordinate all testing with the construction schedule.
  - c. With the assistance of the construction contractors and subcontractors, perform all performance tests. Fully document tests for all Equipment/Systems.
  - d. Submit test procedure schedule, procedures, forms, and other documentation to the Contracting Agency for approval within 30 days after approval of the Commissioning Plan or at least 30 days prior to starting any testing required.
  
10. Provide, if contracted, any and all Testing and Balancing services identified in the construction bid documents.
  - a. Equipment/Systems identified in the construction bid documents shall be tested in all operating modes to include the full range of potential operating conditions up to and including maximum load.
  - b. Provide air system balancing, including Variable Air Volume (VAV) Boxes, air handling units, Lab Airflow Control System components and controls, exhaust fans, complete grille and register reports, and duct traverse reports for each main duct system riser.
  - c. Provide hydronic balancing for the heating water system, chilled water system, and heat recovery systems, including functional performance testing reports for coils and pumps that are within those Equipment/Systems.
  - d. Testing and Balancing shall be substantially complete prior to Functional Performance Testing, contemplated under 9(a) above, especially where unbalanced conditions would affect the results of the Functional Performance Tests.
  
11. Perform Functional Performance Testing (FPT). Submit FPT procedures to the Contracting Agency for approval. Each procedure shall reference the applicable specification, shall have a unique alpha-numeric designator, shall identify the target setpoints and inputs, shall identify the range of acceptable results for each condition tested, and shall include detailed test instructions such that the test could be repeated under identical conditions with repeatable results. Submit FPT deficiency report forms to the Contracting Agency's Representative for approval. These deficiency reports shall include cause of the failure, corrective action to be taken, and schedule for retest. Verify that the deficiencies have been corrected.
  
12. Schedule and attend the initial commissioning meeting with the Contracting Agency, general contractor and subcontractors to describe commissioning and to discuss the purpose, duties, and responsibilities of all participants. In addition, schedule and attend regular commissioning progress meetings with all participants.

13. Perform the commissioning procedures detailed in The Building Commissioning Handbook, in the sections identified below. Note that the commissioning provider is responsible for defining all commissioning procedures in the Commissioning Plan (including the work assigned to the design professional (A/E) as noted in the reference):
  - a. Appendix 4-2L, Mechanical, Facility Startup/Commissioning (except that Test Engineer and Testing and Balancing service shall be provided by the commissioning provider)
  - b. Appendix 4-5, Commissioning, General Requirements (Owner training shall be provided by the commissioning provider.)
  - c. Appendix 4-6, Commissioning, HVAC Systems
  - d. Appendix 4-7, Commissioning, Supply Air Systems
  - e. Appendix 4-8, Commissioning, Exhaust Systems
  - f. Appendix 4-9, Commissioning, Hot Water Heating Systems
  - g. Appendix 4-10, Commissioning, Chilled Water Systems
  - h. Appendix 4-12, Commissioning, Testing, Adjusting and Balancing (note that all Testing and Balancing services are included in the scope of the commissioning provider's work)
14. Commission the following Equipment/Systems as shown on the Work Assignment Contract and the associated construction bid documents.
  - a. Chilled Water System, including chillers, pumps, cooling towers, condensers, piping, valves, etc.
  - b. Hot Water System, including boilers, hot water pumps, valves, piping, etc.
  - c. Steam Distribution System (boilers, piping, hot well, steam traps, condensate pumps)
  - d. Air handling units (supply fans, return fans, coils, valves, variable frequency drives (VFD), ducts, dampers, filters)
  - e. Packaged air conditioning (AC) or heat pump (HP) units (supply fans, return fans, coils, valves, VFD, ducts, dampers, filters, compressors, condensers)
  - f. Terminal Units
  - g. Unit Heaters
  - h. Heat recovery coils and pumps
  - i. Domestic Water Systems, including steam water heaters, backflow preventers, recirculating pumps, and booster pumps
  - j. Building Automation System (controls - pneumatic, electric, and digital controls)
  - k. Lighting controls (light sweep and daylight dimming)
  - l. Testing and balancing
15. Verify that training specified in the construction bid documents has been provided to the Contracting Agency.
16. Verify that operations and maintenance materials specified in the construction bid documents are complete and delivered to the Contracting Agency.
17. Document all commissioning procedures completed and submit to Contracting Agency a final comprehensive report detailing all commissioning services provided upon completion of all commissioning services.

## **Proposal Content**

Proposers are responsible for carefully reading all the terms and conditions contained in this RFP and following the instructions given. The proposal should clearly describe qualifications, experience, and capability to do the work described in this RFP and should address all information requested under Section B, Narrative, below for purposes of scoring under the evaluation criteria. Proposers should review the Evaluation Criteria section for additional detail. Proposals that do not contain all the information requested may be rejected as non-responsive.

The entire original proposal shall be typewritten, single-sided on standard (8½” x 11”) paper and must bear the original signature(s) of the official(s) authorized to sign the proposal. The proposal shall be a maximum of ten (10) pages, excluding resumes and work samples, as noted below. Other materials not requested in this RFP will not be considered in the evaluation of proposals.

The original signed proposal, plus three (3) legible copies of the complete proposal must be submitted. The three copies should be double-sided on standard (8½” x 11”) paper. Proposers must provide three copies of all work samples, resumes, and other required attachments. Unbound copies of all materials are preferred. Proposers are requested not to use plastic binders, covers or other materials that are not recyclable. Proposals must contain the following information:

### A. Cover Letter/Title Page

Proposals may include one or both of these pages. Include the title of the proposal, the name of the firm or individual, the name, address, and telephone number of a contact person, the date of submission and authorizing signature. These pages are not included in the 10-page limit.

### B. Narrative

1. Using the Equipment/Systems list on Page 1, indicate the type of work you or your firm is proposing to perform (e.g., types of Equipment/Systems you or your firm will commission) under this RFP.
2. Indicate the technical services you or your firm specializes in. Particular emphasis should be provided on the method of commissioning used by your firm (e.g., your firm performs functional tests or you monitor the start-up procedures of all contractors and subcontractors). Also indicate data gathering methods for the scope of work proposed under the individual Work Assignments. The firm or individual must show a thorough understanding of HVAC and HVAC control systems.
3. Project Experience. Describe prior work performed during the last five (5) years that is similar to the work being proposed under this RFP. In particular, provide a list of school facility projects. In an absence of such projects, provide a list of most recent projects of similar nature and briefly discuss, based on these examples, your ability to successfully commission the school facility projects. At a minimum, provide a brief description of each project, current client references (including names and phone numbers), the dates services were performed, specific services you provided, size and type of the project, and project costs at completion. List all clients served in the last 24 months, including name, address, phone number, e-mail, and type of work performed.

4. Personnel Experience/Qualifications. Submit names and relevant experience of the personnel, other contracted commissioning providers that will be commissioning specific equipment, including subcontractors (such services as Testing and Balancing, controls testing) who will perform the work being proposed under this RFP. Provide brief resumes that give sufficient information to demonstrate minimum qualifications are met, and experience and expertise in the work to be done. Resumes are not considered part of the 10-page limit on proposal length, but should be concise and focused on education, professional credentials, relevant commissioning experience, brief work history, length of service with your firm, and current client references and work experience of the last five (5) years. The last 10 years' experience may be used for individuals who do not hold a 4-year technical degree. Substitutions of personnel identified herein during performance of Work Assignment Contracts will be allowed only with prior approval of the Office of Energy. In particular, describe the qualifications of the proposed Test Engineer, including education, training, and experience in commissioning schools.
5. Organization, Management and Administration. Describe how the work will be organized, managed, and administered so as to meet specified requirements. Demonstrate the ability to accomplish the required tasks and deliver the final product(s) for the type of work being proposed under this RFP within the specified times. Include the ability to present ideas and written materials in a clear and simple manner. Briefly discuss your or your firm's ability to coordinate complex projects and work with people. Include a statement indicating the firm's or individual's commitment to maintaining the continuity of the assigned staff throughout the project.
6. Work Samples. Provide samples from past projects of typical written and graphic materials prepared for the type of work being proposed under this RFP. One work sample should be for an HVAC project (specifically, the fan motors in an air handling unit with a flow greater than 10,000 CFM), while the other work sample should be for a DDC system (specifically, static pressure control in a VAV system) within a DDC system with more than 250 points. Each work sample should include:
  - a. Copy of an initial Commissioning Plan
  - b. Sample of commissioning specification for selected equipment
  - c. Sample of functional testing procedures for selected equipment
  - d. Sample of inspection checklist
  - e. Sample of commissioning issues log
  - f. Copy of the Executive Summary of Final Commissioning Report

Work samples are not considered part of the 10-page limit on proposal length. Do not submit more than two (2) work samples. Each work sample should include items "a" through "f" listed above. If any item is not included or accounted for, then the sample will be deemed incomplete and the proposal will be rejected.

- C. Proposers must complete and submit the following forms with the proposal, which are included as Pages 12 and 13 of this RFP. These forms are not included in the 10-page limit on proposal length.

Form 1: Experience. Complete a separate form for each person. Indicate the commissioning experience for which the person qualifies in each area and an estimate of the number of buildings/projects commissioned.

Form 2: Geographic Availability. Indicate on this form where in Oregon your firm is willing to work. This information will be used by Contracting Agencies to determine which contractors are willing to work in a particular area. It is not part of the evaluation and will not affect qualification.

- D. Cost Proposal

Identify hourly rates for all personnel, including subcontractors, who would perform the work specified in the proposal. Identify personnel by name and the type of work they would perform (e.g., management, technical, support). Include variations in the rates, if any, for items such as travel time and report writing versus on-site work. Specify the time period for which the rates are guaranteed.

The hourly rates must include all costs, direct and indirect, except travel expenses, which may be reimbursed in accordance with State of Oregon approved policy and at the rates contained therein. The hourly rate must include all personnel costs, office expenses, equipment and supplies, training, subcontractors, overhead and any other costs associated with the performance of the work and operation of a business.

**Note:** The cost proposal is a required element of the proposal but will not be a factor in the proposal evaluation process. Cost information (proposed hourly rates) will be available to Contracting Agencies in the information listed for all qualified commissioning providers.

## **Evaluation Criteria**

A team of at least three (3) technical and management personnel will evaluate proposals ("Evaluation Team"). The evaluation procedure will consist of a determination of Pass/Fail for each of the following criteria. In order to be qualified, the firm must Pass all of the criteria from A through E.

- A. **Project Experience.** Extent of experience in performing the type of work described in this RFP. Determination of whether a firm or individual is qualified will be based on the complete proposal, including the narrative, Forms 1 and 2, and the work samples. To qualify to perform work under this RFP, experience in commissioning HVAC and HVAC controls is required.

Specifically, the proposer must have experience with commercial and institutional building energy systems and operating characteristics that are similar to those in the school facilities being evaluated. The proposal must show that at least 15 buildings or major HVAC control systems have been commissioned within the past five (5) years. Each building should exceed 35,000 square feet and each control system must include more than 250 points.

The Office of Energy reserves the right to limit an individual's or firm's type of commissioning work available under an Agreement to Agree based on qualifications and experience. For example, if a firm does not have any experience in commissioning chilled water systems, then the Office of Energy will not qualify the firm to commission this type of system. Each Agreement to Agree will indicate which system(s) the commissioning provider is qualified to commission.

- B. **Qualifications and Experience of Personnel.** Level of qualifications and expertise of personnel who will be assigned to the contract that demonstrates the ability to perform the type of work described in this RFP.

1. A qualified Commissioning Provider must possess, at a minimum:

- a. A technical degree from an accredited four-year school.
- b. Four (4) years of experience in one or more of the following areas: commercial and industrial technology, heating, ventilation and air conditioning systems, lighting controls, energy efficiency technologies, and maintenance procedures.
- c. Four (4) years of experience in commissioning HVAC and HVAC control systems.
- d. If a degree is not held, then the total relevant experience of an individual in the firm must exceed ten (10) years.

2. The firm should have experience in at least 60% of the Equipment/Systems listed on Form 1. The firm must have experience in "Controls - DDC" and at least one of the two types of HVAC systems. Experience includes providing commissioning in at least ten (10) buildings or major HVAC control systems within the past five (5) years. Each building should exceed 35,000 square feet and each control system must include more than 250 points.

- C. **Organization, Management, and Administration.** Level of skills and experience in organizing, managing and administering projects. This involves report preparation in a timely and efficient manner and the ability to meet project budgets and timelines. It also includes good communication skills with an emphasis on clear and simple presentation of ideas, and an ability to work with people. The proposal should demonstrate experience in organizing, managing, and administering at least three (3) concurrent projects (exceeding 150,000 square feet) on schedule, within budget, with clear internal and external communications. In addition, the proposal should indicate who coordinates the work within the firm and which staff member works on which aspects of the project.

- D. Work Samples. Work samples demonstrate and support the required level of experience and expertise for the work being proposed. In order to pass, the work sample must be complete (see Item 6, Work Samples, under Proposal Content), well written, and well organized. In addition, the work sample must pass a basic reality check (i.e., findings and conclusions are reasonable). Finally, the work sample must contain sufficient evidence indicating that the firm or individual understands commissioning procedures and performs commissioning with sufficient expertise.
- D. Proposal. The proposal is complete, including all required information, completed forms, and work samples. Proposal content is accurate, grammatically correct, clear, and concise.

All Proposers will be notified of the results of their evaluation.

### **RFP Terms and Conditions**

Cost of developing the proposal, attendance at an interview or any other such costs are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the Office of Energy.

The Office of Energy reserves the right to issue amendments to this RFP prior to the closing date. In the event it becomes necessary to amend any part of this RFP, the Office of Energy will provide notice of the amendment in the same manner as notice of the original RFP. If amendments to the RFP are issued, each Proposer must acknowledge receipt of each specific amendment in the transmittal letter accompanying proposals. If a Proposer does not acknowledge receipt of any amendment, then that Proposer may be deemed non-responsive.

The Office of Energy reserves the right to reject any or all proposals, if such rejection would be in the public interest. The Office of Energy reserves the right to cancel or postpone this RFP at any time, if such would be in the public interest. The Office of Energy reserves the right to award no Agreements to Agree, or to award multiple Agreements to Agree. Likewise, the Office of Energy reserves the right to negotiate the statements of work from within the scope of work described in the RFP that may be required under Work Assignment Contracts between the commissioning firm and the Contracting Agencies .

Firms or individuals submitting proposals in response to this RFP may be requested by the Office of Energy to answer questions or provide additional documentation. This will allow the Proposer to clarify the proposal and answer questions the Office of Energy may have regarding Proposer's understanding of the scope of work identified herein and Proposer's understanding of the other Contracting Agencies to be served. However, the Office of Energy may determine to make an award without further discussion of proposals received. Therefore, it is important that each proposal submitted be as complete, clear, and concise as possible.

Qualified firms and individuals will be required to attend a vendor orientation meeting. This meeting will be scheduled by the Office of Energy and will occur in Salem. Notice of the meeting will be provided one month prior to the meeting.

## **Solicitation Protest**

Proposers may submit a written protest or request for change of particular solicitation provisions, specifications, or terms and conditions of the RFP, Agreement to Agree, or Work Assignment Contract to Jan Simmons (see Page 13) prior to submitting a proposal. The Proposer shall submit in writing the reasons for the protest or request and any proposed changes to the solicitation provisions, specifications or terms and conditions of the RFP, Agreement to Agree, or Work Assignment Contract. The Office of Energy will not consider a solicitation (including all attachments and exhibits) protest submitted by any person whose proposal has been received by the Office of Energy. Submission of a proposal constitutes acceptance of all terms and conditions of this RFP in its entirety.

## **Schedule**

Interested firms and individuals will have an ongoing opportunity to qualify for the work described in this RFP. There is no final deadline for proposals under this RFP. Proposals will be accepted at any time and evaluated on a regular basis. The Office of Energy plans to evaluate proposals and update the list of qualified commissioning providers according to the following schedule:

RFP Published:	October 10, 2002
First Evaluation:	November 11, 2002
First List:	December 2, 2002
Second Evaluation:	December 9, 2002
List Updated:	December 30, 2002
Third Evaluation:	January 6, 2003
List Updated:	January 27, 2003
Fourth Evaluation:	February 3, 2003
List Updated:	February 24, 2003
Fifth Evaluation:	March 3, 2003
List Updated:	March 24, 2003

After the March 2003 evaluation, proposals will be evaluated as they are received. The list of Qualified Commissioning Providers will then be updated July 1, 2003, October 1, 2003 and at the beginning of each calendar quarter thereafter.

Qualified commissioning providers are added to the list (which is posted on the Office of Energy's Web site for the schools) when they have:

1. Been approved by the evaluation team,
2. Returned to the Office of Energy a signed Agreement to Agree, and
3. Sent to the Office of Energy proof of liability insurance as required in Section 12 of the Agreement to Agree.

## **Contract Terms and Conditions**

The Office of Energy may not contract with any person who is not established as an independent contractor. Information regarding independent contractor status is contained in Exhibit A of the sample Work Assignment Contract.

Agreements to Agree will be written initially for a term of two (2) years. The Office of Energy reserves the right to extend any or all Agreements to Agree for an additional two-year period. In addition, the Office of Energy reserves the right to amend any of the terms, conditions or other requirements as set forth in the Agreement to Agree which may be awarded as a result of this RFP. The total amount of each Work Assignment Contract is not known. Final Work Assignment Contract amounts are contingent on the number of Work Assignment Contracts awarded, the total funds available and the volume of Contracting Agency demands for services during the term of the Agreement to Agree. See "Notice" section on Page 2 of this RFP.

Contractors are required to obtain and provide evidence of the following insurance coverage: workers' compensation, comprehensive general liability with a combined single limit or equivalent in an amount not less than \$1,000,000, and automobile liability with a combined single limit or equivalent in an amount not less than \$1,000,000. (See Section 12 of Attachment 1 to sample Agreement to Agree.) Contractors are required to provide the Office of Energy with certificates of insurance and prior notice of change or cancellation. The contractor shall provide the Office of Energy with a copy of its professional liability insurance policy upon request. An Agreement to Agree will not take effect until documentation of insurance coverage is received by the Office of Energy.

Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the Work Assignment Contract work.

## **Questions**

Questions about this RFP or the selection procedure should be directed to:

	<u>Betty Merrill</u>	<b>or</b>	<u>Greg Churchill</u>
Telephone:	503-378-6510		503-373-7563
E-mail:	<a href="mailto:betty.merrill@state.or.us">betty.merrill@state.or.us</a>		<a href="mailto:gregory.churchill@state.or.us">gregory.churchill@state.or.us</a>
Fax:	503-373-7806		503-373-7806
Toll-free:	800-221-8035 (Oregon only)		800-221-8035 (Oregon only)
Address:	625 Marion Street NE, Suite 1 Salem, OR 97301-3742		625 Marion Street NE, Suite 1 Salem, OR 97301-3742

## **Submission of Proposals**

To be considered in the First Evaluation, proposals must be received at the Salem office of the Office of Energy on or before 5:00 p.m. PST, Monday, November 11, 2002. Proposals received after that time will be considered in subsequent evaluations, depending on date of receipt. Refer to the Schedule in the RFP Terms and Conditions section on Page 11 for additional detail.

Proposals may be hand delivered or mailed. Proposals may **not** be submitted by either facsimile (fax) or electronic data interchange (e-mail). It is the responsibility of the Proposer to ensure that proposals arrive at the Office of Energy. Address proposals to:

Jan Simmons  
Commissioning for Schools  
Oregon Office of Energy  
625 Marion Street NE, Suite 1  
Salem, OR 97301-3742

## **Attachments**

Form 1 and Form 2 (Page 12 and 13)

Attachment A: Sample Agreement to Agree (including Attachment 1 to Agreement to Agree, Contract Terms and Conditions, and Attachment 2 to Agreement to Agree, Contractor Work Assignment Form)

## **Links**

Link to SB 1149 at: [www.leg.state.or.us/99reg/measures/sb1100.html](http://www.leg.state.or.us/99reg/measures/sb1100.html)

Link to Program Guidelines for SB 1149 at: [www.energy.state.or.us/sb1149/Schools/Schools1149.PDF](http://www.energy.state.or.us/sb1149/Schools/Schools1149.PDF)

Link to Office of Energy commissioning publications at: <http://www.energy.state.or.us/bus/comm/bldgcx.html>

**Form 1 - Experience**

**Name of Individual:** \_\_\_\_\_

**Name of Proposer:** \_\_\_\_\_

Use the descriptions in the Proposal Content and Evaluation Criteria sections of the RFP to complete this form.

**Check only the highest level in each area for which you qualify as a commissioning services provider, and indicate number of buildings commissioned.**

Area of Expertise	Simple Systems	Estimated Number of Buildings	Complex Systems	Estimated Number of Buildings
Commercial lighting controls				
HVAC – package				
HVAC – custom built				
ASD Motor drives				
Testing and balancing				
Controls – DDC				
Controls – Pneumatic with DDC interaction				
Chilled water systems				
Hot water heating systems				
Steam distribution systems				
Other (Specify)				

Average size of building containing simple systems: \_\_\_\_\_

Average size of building containing complex systems: \_\_\_\_\_

## Form 2 - Geographic Availability

Proposers must complete this form and submit it with the proposal. This information will be made available to Contracting Agencies for their use in selecting a contractor.

Proposer Name: \_\_\_\_\_

ESD Region	Counties	Availability	
		YES	NO
Region 1	Clatsop, Columbia, Tillamook, Washington		
Region 2	Multnomah		
Region 3	Marion, Polk		
Region 4	Linn, Lincoln, Benton		
Region 5	Lane		
Region 6	Douglas		
Region 7	Coos, Curry		
Region 8	Jackson, Josephine, Klamath		
Region 9	Hood River, Wasco		
Region 10	Crook, Deschutes		
Region 11	Lake		
Region 12	Umatilla, Morrow		
Region 13	Baker, Union		
Region 14	Malheur		
Region 15	Clackamas		
Region 16	Yamhill		
Region 17	Harney		
Region 18	Wallowa		
Region 19	Gilliam, Sherman, Wheeler		
Region 20	Grant		
Region 21	Jefferson		

**Attachment A**  
**To Request for Proposals #03-09**  
**Commissioning Services for Schools**

**AGREEMENT TO AGREE**

This Agreement to Agree (“Agreement”) is entered into on \_\_\_\_\_, 200\_\_\_\_, by the State of Oregon acting by and through its Office of Energy (“Agency”) and \_\_\_\_\_ (“Contractor”) for purposes of identifying the form of work order to be used, the general terms and conditions applicable to subsequent contracts entered into between State of Oregon education service districts, school districts, or Office of Energy (individually, “Contracting Agency,” collectively, “Contracting Agencies”) pursuant to which Contractor will render commissioning services and related services to Contracting Agencies. This Agreement, by itself, is not a binding contract. Rather, Contracting Agencies and Contractor intend to enter into binding and enforceable contracts for any combination of commissioning services by execution of a contractor work assignment form substantially in the form attached hereto as Attachment 2 (“Contractor Work Assignment”) that specifies the work to be performed and makes the standard terms and conditions and other requirements set forth in Attachment 1 to this Agreement to Agree applicable to the work. Each such Contractor Work Assignment so executed shall create a separate contract between Contractor and Contracting Agency (consisting of the Contractor Work Assignment, including Exhibit A to Contractor Work Assignment, together with the standard terms and conditions and other requirements) (“Work Assignment Contract”) enforceable in accordance with the terms thereof and independent of all other such Work Assignment Contracts.

This Agreement is effective on the date it has been signed by the Office of Energy and Contractor and shall expire two years from that date. This Agreement may be extended for an additional two-year period upon mutual consent of the Office of Energy and Contractor. The Office of Energy may, at its sole discretion, terminate this Agreement upon thirty (30) days written notice to Contractor.

Nothing in this Agreement relieves any Contracting Agency from complying with all laws and regulations applicable to Work Assignment Contracts contemplated or executed between Contractor and the Contracting Agency.

**CONTRACTOR**

**OFFICE OF ENERGY**

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

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

Name: \_\_\_\_\_

Name: Bruce Westerberg

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

Title: Administrator, Central Svcs Div.

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

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

Telephone No.: \_\_\_\_\_

Telephone No.: (503) 378-3637

Facsimile No.: \_\_\_\_\_

Facsimile No.: (503) 373-7806

**Attachment 1 to Agreement to Agree**

Agency Contract No. \_\_\_\_\_

**COMMISSIONING SERVICES WORK ASSIGNMENT CONTRACT  
STANDARD TERMS AND CONDITIONS**

- 1. Effective Date and Duration.** This Work Assignment Contract shall become effective on the date this Contract has been signed by every party hereto and, when, required, approved by Department of Administrative Services and Department of Justice.
- 2. Statement of Work.** Contractor agrees to perform the work required under this Work Assignment Contract in accordance with its terms and conditions.
- 3. Consideration.**

  - a.** Payment for all work performed under this Work Assignment Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of indicated in the Contractor Work Assignment form, which includes any travel expense reimbursement that may be allowed. Travel expense reimbursement shall be made in accordance with the travel policy applicable to Contracting Agency that is in effect at the time the expense is incurred. Payment shall be based upon Contractor's hourly rates and fixed fees set forth in Exhibit A, Contractor's Rate and Fee Schedule.
  - b.** Interim payments for Work performed shall be made to Contractor following Contracting Agency's review and approval of invoices submitted by Contractor.
  - c.** Contractor shall not submit invoices for, and Contracting Agency will not pay, any amount in excess of the maximum compensation amount set forth in this Work Assignment Contract. If this maximum compensation amount is increased by amendment of this Work Assignment Contract, the amendment must be fully effective before Contractor performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Work Assignment Contract, as it may be amended from time to time in accordance with its terms.
  - d.** Contractor shall submit monthly invoices for work performed. The invoices shall describe all work performed with particularity and by whom it was performed, including hourly rates and fixed fees, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when one third and two thirds of the maximum Work Assignment Contract amount, including expense reimbursement, has been expended.
  - e.** Contractor shall send invoices to the Contracting Agency contact indicated in this Work Assignment Contract.
- 4. Work Assignment Contract Documents.** This Work Assignment Contract consists of the following documents which are listed in descending order of precedence: these Standard Terms and Conditions less all exhibits, the Contractor Work Assignment (including Exhibit A to Contractor Work Assignment), Exhibit A and Exhibit B to these Standard Terms and Conditions, and Office of Energy's Request for Proposals #03-09. All referenced Exhibits and referenced documents are hereby incorporated by reference.
- 5. Independent Contractor; Responsibility for Taxes and Withholding.**

  - a.** Contractor shall perform all required Work as an independent contractor. Although the Contracting Agency reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, Contracting Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
  - b.** If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Work Assignment Contract declares and certifies that: Contractor's Work to be performed under this Work Assignment Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Work under this Work Assignment Contract. Contractor is not an "officer", "employee", or "agent" of the Contracting Agency as those terms are used in ORS 30.265.
  - c.** Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Work Assignment Contract and, unless Contractor is subject to backup withholding, Contracting Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Work Assignment Contract, except as a self-employed individual.
- 6. Subcontracts and Assignment; Successors and Assigns; Key Persons.**

  - a.** Contractor shall not enter into any subcontracts for any of the Work required by this Work Assignment Contract, or assign or transfer any of its interest in this Work Assignment Contract, without Contracting Agency's prior written consent. In addition to any other provisions Contracting Agency may require, Contractor shall include in any permitted subcontract under this Work Assignment Contract a requirement that the subcontractor be bound by Sections 6, 10, 11, 15 and 17 of this Work Assignment Contract as if the subcontractor were the Contractor. Contracting Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Work Assignment Contract.

b. The provisions of this Work Assignment Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

7. **No Third Party Beneficiaries.** Contracting Agency and Contractor are the only parties to this Work Assignment Contract and are the only parties entitled to enforce its terms. Nothing in this Work Assignment Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Work Assignment Contract.

8. **Funds Available and Authorized; Payments.**

a. Contractor shall not be compensated for work performed under this Work Assignment Contract by any other public agency or department. Contracting Agency has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Assignment Contract within the Contracting Agency's biennial appropriation or limitation. Contractor understands and agrees that Contracting Agency's payment of amounts under this Work Assignment Contract attributable to Work performed after the last day of the current biennium is contingent on Contracting Agency receiving from the Oregon Legislative Assembly or other funding body appropriations, limitations, or other expenditure authority sufficient to allow Contracting Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Work Assignment Contract.

b. Contracting Agency will only pay for completed work that is accepted by the Contracting Agency.

9. **Representations and Warranties.**

a. **Contractor's Representations and Warranties.** Contractor represents and warrants to Contracting Agency that (1) Contractor has the power and authority to enter into and perform this Work Assignment Contract, (2) this Work Assignment Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Work under this Work Assignment Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, and (4) Contractor shall, at all times during the term of this Work Assignment Contract, be qualified, professionally competent, and duly licensed to perform the Work.

b. **Warranties cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. **Ownership of Work Product.** All work product of Contractor that results from this Work Assignment Contract (the "Work Product") is the exclusive property of Contracting Agency. Contracting Agency and Contractor intend that such Work Product be deemed "work made for hire" of which Contracting Agency shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire", Contractor hereby irrevocably assigns to Contracting Agency all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as Contracting Agency may reasonably request in order to fully vest such rights in Contracting Agency. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

11. **Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Contracting Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Work Assignment Contract.

12. **Insurance Requirements.** During the term of this Work Assignment Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

a.  **Required by Contracting Agency of contractors with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. All employers, including Contractor, that employ workers who work under this Work Assignment Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

b.  **Required by Contracting Agency**                       **Not required by Contracting Agency**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than  \$200,000,  \$500,000,  \$1,000,000, or  \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Work Assignment Contract.

- c.  **Required by Contracting Agency**       **Not required by Contracting Agency**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than  \$200,000,  \$500,000,  \$1,000,000, or  \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Work Assignment Contract. It shall provide that the State of Oregon, the Office of Energy and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Work Assignment Contract.

- d.  **Required by Contracting Agency**       **Not required by Contracting Agency**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than  Oregon Financial Responsibility Law (ORS 806.060),  \$200,000,  \$500,000, or  \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

e. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to the Office of Energy.

f. **Certificates of insurance.** As evidence of the insurance coverages required by this Work Assignment Contract, the Contractor shall furnish acceptable insurance certificates to the Office of Energy prior to commencing the Work. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**13. Termination.**

a. **Parties' Right to Terminate for Convenience.** This Work Assignment Contract may be terminated at any time by mutual written consent of the parties.

b. **Contracting Agency's Right to Terminate for Convenience.** Contracting Agency may, at its sole discretion, terminate this Work Assignment Contract, in whole or in part, upon 30 days' notice to Contractor.

c. **Contracting Agency's Right to Terminate for cause.** Contracting Agency may terminate this Work Assignment Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Contracting Agency may establish in such notice, upon the occurrence of any of the following events: (i) Contracting Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work; (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Work Assignment Contract is prohibited or Contracting Agency is prohibited from paying for such Work from the planned funding source; (iii) Contractor no longer holds any license or certificate that is required to perform the Work; or (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Work Assignment Contract, fails to perform the Work under this Work Assignment Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Work Assignment Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Contracting Agency's notice, or such longer period as Contracting Agency may specify in such notice.

d. **Contractor's Right to Terminate for cause.** Contractor may terminate this Work Assignment Contract upon 30 days' notice to Contracting Agency if Contracting Agency fails to pay Contractor pursuant to the terms of this Work Assignment Contract and Contracting Agency fails to cure such non-payment within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.

e. **Remedies.** (I) In the event of termination pursuant to Sections 13.a., 13.b., 13.c.(I), 13.c.(ii) or 13.d., Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Contracting Agency, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Contracting Agency upon demand. (ii) In the event of termination pursuant to Section 13.c.(iii) or 13.c.(iv), Contracting Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13.c.(iii) or 13.c.(iv), the rights and obligations of the parties shall be the same as if the Work Assignment Contract was terminated pursuant to Section 13.b.

f. **Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Work Assignment Contract, Contractor shall immediately cease all activities under this Work Assignment Contract, unless Contracting Agency expressly directs otherwise in such notice of termination. Upon termination of this Work Assignment Contract, Contractor shall deliver to Contracting Agency all documents, information, works-in-progress and other property that are or would be deliverables had the Work Assignment Contract been completed. Upon Contracting Agency's request, Contractor shall surrender to anyone Contracting Agency designates, all documents, research or objects or other tangible things needed to complete the Work.

**14. Limitation of Liabilities.** EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTIONS 13.e.(ii) OR 9.a., NEITHER PARTY SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE WORK ASSIGNMENT CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS WORK ASSIGNMENT CONTRACT IN ACCORDANCE WITH ITS TERMS.

**15. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Work Assignment Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Work Assignment Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Contracting Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Work Assignment Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Work Assignment Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Work Assignment Contract, whichever date is later.

**16. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Work Assignment Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contracting Agency's performance under this Work Assignment Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

**17. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Work Assignment Contract. Contractor shall demonstrate its legal capacity to perform the Work under this Work Assignment Contract in the State of Oregon prior to entering into this Work Assignment Contract.

**18. Force Majeure.** Neither Contracting Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of Contracting Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Work Assignment Contract.

**19. Survival.** All rights and obligations shall cease upon termination or expiration of this Work Assignment Contract, except for the rights and obligations set forth in Sections 1, 9, 10, 11, 13, 14, 15, 19 and 26.

**20. Time is of the Essence.** Contractor agrees that time is of the essence under this Work Assignment Contract.

**21. Notice.** Except as otherwise expressly provided in this Work Assignment Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Contracting Agency at the address or number set forth on the signature page of this Work Assignment Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Contracting Agency, such facsimile transmission must be confirmed by telephone notice to Contracting Agency's Work Assignment Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**22. Severability.** The parties agree that if any term or provision of this Work Assignment Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be not affected, and the rights and obligations of the parties shall be construed and enforced as if the Work Assignment Contract did not contain the particular term or provision held to be invalid.

**23. Counterparts.** This Work Assignment Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Work Assignment Contract so executed shall constitute an original.

**24. Department of Administrative Services Approval.** In certain cases, approval of the Department of Administrative Services or Department of Justice, or both, is required before any work may begin under this Work Assignment Contract or an amendment to this Work Assignment Contract.

**25. Disclosure of Social Security Number.** Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR 125-20-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

**26. Governing Law; Venue; Consent to Jurisdiction.** This Work Assignment Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Contracting Agency (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Work Assignment Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon. **CONTRACTOR, BY EXECUTION OF THIS WORK ASSIGNMENT CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**27. Year 2000 Compliance Notice.** In the event Contractor learns or has reason to believe that Contracting Agency's computer hardware or software environment fails to use a date format that explicitly specifies century in any date data, Contractor shall promptly advise Contracting Agency of such failure.

**28. Merger Clause; Waiver.** This Work Assignment Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Work Assignment Contract. No waiver, consent, modification or change of terms of this Work Assignment Contract shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Contracting Agency to enforce any provision of this Work Assignment Contract shall not constitute a waiver by Contracting Agency of that or any other provision.

**29. Effect of Work Assignment Contract Execution. CONTRACTOR, BY EXECUTION OF THIS WORK ASSIGNMENT CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS WORK ASSIGNMENT CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**Exhibit A  
to Standard Terms and Conditions for  
Work Assignment Contract**

**CONTRACTOR RATE AND FEE SCHEDULE**

**Exhibit B**  
**to Standard Terms and Conditions for**  
**Work Assignment Contract**

**CONTRACTOR QUALIFICATION**

The Office of Energy has determined that Contractor is qualified to perform commissioning on the following Equipment/Systems:

**Attachment 2 to Agreement to Agree**

**School Commissioning Contractor Work Assignment**

**Date:** \_\_\_\_\_ **Work Assignment Contract #** \_\_\_\_\_

**From:**

\_\_\_\_\_  
**Contracting Agency**

\_\_\_\_\_  
**Contracting Agency's Contact Person**

\_\_\_\_\_  
**Title**

**Mailing Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

\_\_\_\_\_ ("Contracting Agency") and \_\_\_\_\_

\_\_\_\_\_ ("Contractor") hereby enter into a contract ("Work Assignment Contract") that consists of this Contractor Work Assignment (including Exhibit A) and all terms and conditions set forth in Attachment 1 to that certain Agreement to Agree ("the "Standard Terms and Conditions"). This Work Assignment Contract is effective as of the date of the last required signature hereto (the "Effective Date"). Contractor agrees to complete and deliver to Contracting Agency on the date or dates set forth herein, the work described in the Statement of Work below, in accordance with the provisions of this Work Assignment Contract. Contracting Agency and Contractor agree and acknowledge that on the Effective Date this Work Assignment Contract will constitute a valid and binding contract between Contracting Agency and Contractor enforceable in accordance with the terms of the foregoing documents. Unless terminated or extended, this Work Assignment Contract shall expire when Contracting Agency accepts Contractor's completed performance or on \_\_\_\_\_, whichever date occurs first. Expiration shall not extinguish or prejudice Contracting Agency's right to enforce this Work Assignment Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. Contracting Agency and Contractor agree and acknowledge that this Work Assignment Contract hereby entered is separate and independent of all other Work Assignment Contracts between Contracting Agency and Contractor. Nothing in this Work Assignment Contract relieves Contracting Agency from complying with all laws and regulations applicable to this Work Assignment Contract.

**To:**

\_\_\_\_\_  
**Contractor/Business Name:**

\_\_\_\_\_  
Contractor's Contact Person

\_\_\_\_\_  
Title

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Contractor Data and Certification.** The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown below is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws (including, without limitation, laws for the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

**Contractor Name (tax filing):** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Citizenship** (if applicable): Non-resident alien  Yes  No

**Business Designation** (check one):  Corporation  Partnership  Limited Partnership  Sole Proprietorship  
 Limited Liability Company  Limited Liability Partnership  Other

**Federal Tax I.D.#** \_\_\_\_\_ **or SSN** \_\_\_\_\_

This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

**Statement of Work:** Contractor shall perform at the Facility or Facilities identified below the following Work, the requirements of which are set forth in detail in RFP #03-09. Contractor shall perform the Work and deliver all required documents and reports in accordance with the delivery schedule set forth in RFP #03-09 unless a different delivery schedule is indicated below under "Project Description and Additional Instructions." If the RFP does not include a delivery schedule for certain services and deliverables, then Contractor shall perform those services and deliver those deliverables in accordance with the delivery schedule indicated below for those services and deliverables.

**Contractor shall perform the following Work for the Facility or Facilities indicated below. Contracting Agency shall indicate below if additional sheets are attached:**

\_\_\_\_ **ADDITIONAL SHEETS ARE ATTACHED WITH INFORMATION TO CLEARLY IDENTIFY ALL FACILITIES AND/OR PROJECTS, INCLUDING DETAILS OF THE REQUIRED WORK, FACILITY NAME(S), ADDRESS(ES), AND FACILITY CONTACT PERSON NAME(S) AND TELEPHONE NUMBER(S).**

\_\_\_\_ **Commissioning of Project and/or Equipment for Energy Efficiency Measure (EEM) identified in an energy audit dated** \_\_\_\_\_ **. Check and/or Describe Below.**

- |                                 |                                  |                                  |                                |
|---------------------------------|----------------------------------|----------------------------------|--------------------------------|
| EEM #1 <input type="checkbox"/> | EEM #7 <input type="checkbox"/>  | EEM #13 <input type="checkbox"/> | _____ <input type="checkbox"/> |
| EEM #2 <input type="checkbox"/> | EEM #8 <input type="checkbox"/>  | EEM #14 <input type="checkbox"/> | _____ <input type="checkbox"/> |
| EEM #3 <input type="checkbox"/> | EEM #9 <input type="checkbox"/>  | EEM #15 <input type="checkbox"/> | _____ <input type="checkbox"/> |
| EEM #4 <input type="checkbox"/> | EEM #10 <input type="checkbox"/> | EEM #16 <input type="checkbox"/> | _____ <input type="checkbox"/> |
| EEM #5 <input type="checkbox"/> | EEM #11 <input type="checkbox"/> | EEM #17 <input type="checkbox"/> | _____ <input type="checkbox"/> |
| EEM #6 <input type="checkbox"/> | EEM #12 <input type="checkbox"/> | EEM #18 <input type="checkbox"/> | _____ <input type="checkbox"/> |
- Testing and Balancing

Facility Name(s): \_\_\_\_\_

Facility Address(es): \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Project Description and/or Additional Instructions:**

**Payment: Contracting Agency must indicate payment terms and amounts below:**

\_\_\_\_\_ Contracting Agency agrees to pay Contractor the hourly rates set forth in Exhibit A to Standard Terms and Conditions for Work Assignment Contract for performing the following Work required by this Work Assignment Contract.

**OR:**

\_\_\_\_\_ Contracting Agency agrees to pay Contractor the fixed amount of \$\_\_\_\_\_ for performing the following Work required by this Work Assignment Contract.

The maximum, not-to-exceed compensation payable to Contractor under this Work Assignment Contract, which includes any allowable expenses, is \$\_\_\_\_\_. This not-to-exceed amount may be changed only by a duly executed and effective amendment to this Work Assignment Contract.

**Contractor's Authorized Signature**

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

**Title:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_

**Contracting Agency's Authorized Signature:**

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

**Title:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_

**Program Chargeable:**

**Fund #:**

**Contractor: Submit copy of this Contractor Work Assignment form with invoice.**

Revised 08/27/2001

Exhibit A  
to Work Assignment Contract

**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

**A. CONTRACTOR IS INDEPENDENT CONTRACTOR  
(Contractor completes if Contractor is not a corporation or is a professional corporation.)**

Contractor certifies s/he meets the following standards:

1. I am registered under ORS Chapter 701 (Construction Contractors) to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. (Please check all applicable items; must be at least four):

- \_\_\_\_\_ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
- \_\_\_\_\_ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
- \_\_\_ C. Telephone listing is used for the business that is separate from the personal residence listing.
- \_\_\_ D. Labor or services are performed only pursuant to written contracts.
- \_\_\_\_\_ E. Labor or services are performed for two or more different persons within a period of one year.
- \_\_\_ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**B. CONTRACTING AGENCY APPROVAL**

**ORS 670.600. Independent Contractor standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met.** State agency certifies the contracted work meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Contracting Agency Signature \_\_\_\_\_ Date \_\_\_\_\_  
(Contracting Agency's certification is solely for the Contracting Agency's benefit and internal use.)