

OREGON DEPARTMENT OF ENERGY

Request For Proposals #07-02

Supercedes RFP #03-02

ORPIN # 330000-5501-5

ENERGY AUDITS FOR SCHOOLS and OTHER PUBLIC BUILDINGS

March 3, 2006

Introduction

The State of Oregon, acting by and through the Oregon Department of Energy (the "Department of Energy"), is seeking proposals from firms and individuals qualified to provide on-site energy audits and energy studies as contemplated under Senate Bill 1149 and other energy conservation programs.

Senate Bill 1149

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 \$7 million annually for ten years to fund energy efficiency improvements in Oregon public schools in Portland General Electric and PacifiCorp service territories.

The bill directs education service districts first to complete energy audits for school districts. Once all audits for a school district have been completed, funds may be distributed for implementation of the audit recommendations.

The range of facilities to be audited includes buildings that are owned and operated by one or more education service districts or school districts and used for any purpose associated with public education in kindergarten through grade 12, including buildings used for any purpose associated with public education in kindergarten through grade 12 and that are owned by an education service district or a school district and leased to another education service district or school district (collectively, "Facilities," singularly, "Facility"). Facilities include but are not limited to administration buildings, maintenance garages and shops, and swimming pools. Facilities do not include 1) buildings that are scheduled to be closed within approximately 2 years; 2) buildings that are leased by an education service district or school district from another education service district or school district for non-public education-related purposes; and 3) buildings that are leased from an owner other than an education service district or school district, regardless of the type of building use.

Other Energy Conservation Programs

The successful firm or individual also may contract as described in this RFP with the Department of Energy or any other agency of the State of Oregon for energy audit services described in this RFP but that are not related to SB 1149 projects. In that instance, any reference to the Department of Energy, education service districts or school districts in the RFP shall be deemed to include any other agency of the State of Oregon, as appropriate to the context. However, this RFP does not confer any contracting authority to any state agency that is not otherwise held by that state agency.

For audits of facilities that are not related to SB 1149 projects, the exclusions above do not apply, and facilities may also include water/wastewater treatment facilities and any other building or facility operated by a public agency.

Qualified Energy Auditors

The Department of Energy plans to establish a statewide pool of qualified energy auditors in order to obtain a greater range of availability and expertise for contracting energy audit services for Oregon schools and other public buildings. Interested firms or individuals that specialize in these types of facilities and/or services are encouraged to submit proposals. Firms or individuals may propose to provide any or all of the audit levels identified in this RFP. The audit levels offered will have no bearing on the acceptability of the proposals.

As a result of this solicitation, qualified firms and individuals may enter into an “Agreement to Agree” with the Department of Energy. (See Attachment 1 for sample Agreement to Agree.) This pool of qualified auditors will be available to contract with education service districts, school districts, and the Department of Energy for the services authorized in this solicitation. The Agreement to Agree sets forth the terms and conditions under which an education service district, school district or the Department of Energy and qualified energy auditor may contract to perform specific work requested in the Contractor Work Assignment. Contracts entered 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 Department of Energy. The contracting education service district, school district, or the Department 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 an auditor, a Contracting Agency may negotiate with or solicit quotes from one or more energy auditors qualified under this RFP. Nothing in this solicitation process, Request for Proposals, 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 Proposals (RFP) and for following the instructions given. Proposals that do not contain all the information requested may be rejected as non-responsive.

Proposers must review the entire RFP to ensure that all required information is included in the proposal. Contact Jan Simmons (telephone 503-378-6968 or e-mail janis.h.simmons@state.or.us) to obtain the complete RFP. The complete Request for Proposals consists of the following:

1. Request for Proposals #07-02 (Pages 1-19)
2. Attachment A/Sample Agreement to Agree (Pages 20-31)
Includes Attachment 1, Standard Terms and Conditions,
and Attachment 2, School Energy Audit Contractor Work Assignment
3. Appendix A, Audit and Audit Report Requirements (13 pages)
4. Appendix B, Audit Quality Control Review (4 pages)

Funding for energy audits 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 100-200 energy audits for Facilities will be performed within the remaining six (6) years of the program. It is anticipated that the minimum amount available for all Work Assignment Contracts resulting under this solicitation over the next four years will be approximately \$400,000, with the maximum amount estimated to be

up to \$750,000, depending upon such factors as available funding, program authorization, and volume of Contracting Agency demand for services.

The Department of Energy estimates that individual Work Assignment Contract amounts may range up to \$15,000 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.

Minimum Qualifications

Individuals or firms must meet the minimum qualifications described in this section to be listed as qualified energy auditors. All experience used to qualify must be within the last 10 years. Determination of whether a firm or individual meets the minimum qualifications will be based on the complete proposal, including the narrative, Forms 1, 2 and 3, and the work samples. Forms 1, 2, and 3 are included in this RFP on Pages 17, 18 and 19. The Department of Energy reserves the right to limit an individual's or firm's type of work based on qualifications and experience. For example, if a firm proposes to do Levels I, II, and III Energy Audits but is not qualified at all levels, then the Department of Energy can limit the firm to providing only Level I and/or Level II Energy Audits as applicable. The list of auditors qualified under this RFP and entering into Agreements to Agree with the Department of Energy will indicate which audit level(s) and other work a firm or individual is qualified to perform.

The areas of expertise required to perform the services identified in this solicitation include expertise in maintenance, theory and operation of various equipment and systems, including but not limited to, the following:

- HVAC equipment, systems, and controls
- Central fan systems and packaged fan systems
- Boilers
- Steam distribution systems
- Hydronic heating and cooling systems
- Chillers/refrigeration
- Motors
- Controls (pneumatic, electric, and direct digital)
- Electrical systems
- Lighting systems and standards
- Domestic water heaters
- Heat recovery systems
- Weatherization

These will be referred to as "Equipment/Systems".

A. Level I Qualified Energy Auditor or team must possess the following:

1. A Level I Qualified Energy Auditor must possess, at a minimum, a technical degree from an accredited two or four year school, which included coursework in the following areas of expertise: commercial and industrial technology, energy auditing, heating, ventilation and air conditioning systems, lighting design, energy efficiency technology and preventive maintenance procedures. Level I energy auditing experience may be substituted for education on a basis of 2 years of experience for 1 year of education.

2. A Level I Qualified Energy Auditor must possess, at a minimum, six years of commercial auditing experience. Auditing experience includes demonstrated expertise in all of the following areas:
 - a. Identifying potential energy savings opportunities available through the purchase and installation of energy efficiency measures and/or low-cost/no-cost measures, and improved operation and maintenance procedures.
 - b. Using standard practices to calculate energy savings, and performing benefit to cost analysis and simple payback analysis of measures.
 - c. Determining equipment and installation costs.
 - d. Performing photometric calculations in estimating light levels.
 - e. Using energy auditing measurement equipment.

Experience only in designing new lighting and mechanical systems for major system replacement is not considered auditing experience.

B. Level II Qualified Energy Auditor or team must possess the following:

1. A Level II Qualified Energy Auditor must possess, at a minimum, a technical degree from an accredited two or four year school with an additional two (2) years experience in one or more of the following areas: commercial and industrial technology, energy auditing, heating, ventilation and air conditioning systems, lighting design, energy efficiency technology and preventive maintenance procedures. If a degree is not held, then the total relevant experience of any individual seeking to be qualified as a Level II Qualified Energy Auditor must exceed eight (8) years.
2. A Level II Qualified Energy Auditor must possess, at a minimum, eight years of commercial auditing experience. Auditing experience includes demonstrated expertise in all of the following areas:
 - a. Identifying potential energy savings opportunities available through the purchase and installation of energy efficiency measures and/or low-cost/no-cost measures, and improved operation and maintenance procedures.
 - b. Calculating energy savings, performing cost analyses, and simple payback analyses of measures.
 - c. Determining equipment and installation costs.
 - d. Performing photometric calculations in estimating light levels.
 - e. Using energy auditing measurement equipment.
 - f. Modeling basic building features such as internal gains, multiple zones with central HVAC systems, envelope measures that affect thermal transmission, and architectural shading effects.
 - g. Using data collection devices to monitor and analyze building energy equipment, systems, and other building parameters (e.g., space temperatures).

Experience only in designing new lighting and mechanical systems for major system replacement is not considered auditing experience.

C. Level III Qualified Energy Auditor

A Level III Qualified Energy Auditor is the individual who prepares the building energy analyses for an Energy Audit. The Level III Qualified Energy Auditor shall review and sign the final energy analysis report, ensuring it is complete and of the quality required by the Department of Energy. Level III Qualified Energy Auditors are deemed qualified to perform scoping studies. The Level III Qualified Energy Auditor must possess the following:

1. A Level III Qualified Energy Auditor must possess, at a minimum, a technical degree from an accredited four-year school with an additional four (4) years of experience in one or more of the following areas: commercial and industrial technology, energy auditing, heating, ventilation and air conditioning systems, lighting design, energy efficiency technology and preventive maintenance procedures. If a degree is not held, then the total relevant experience of an individual in the firm must exceed ten (10) years.
2. Experience with commercial and institutional building energy systems and operating characteristics that are similar to those in the Facilities being evaluated. Experience in determining accurate cost estimates for evaluating the cost effectiveness of energy efficiency measures. Experience with life-cycle cost methods that reflect equipment operation and maintenance costs and take into account the useful life of measures.
3. Two or more years of modeling experience with at least one of the computerized hourly building model tool programs for energy analysis as listed on Form 2.
4. A Level III Qualified Energy Auditor must possess, at a minimum, ten years of commercial auditing experience. Auditing experience includes demonstrated expertise in all of the following areas:
 - a. Identifying potential energy savings opportunities available through the purchase and installation of energy efficiency measures and/or low-cost/no-cost measures, and improved operation and maintenance procedures.
 - b. Calculating energy savings, performing cost analyses and simple payback analyses of measures.
 - c. Determining equipment and installation costs.
 - d. Performing photometric calculations in estimating light levels.
 - e. Using energy auditing measurement equipment.
 - f. Modeling basic building features such as internal gains, multiple zones with central HVAC systems, envelope measures that affect thermal transmission, and architectural shading effects.
 - g. Using data collection devices to monitor and analyze building energy equipment, systems, and other building parameters (e.g., space temperatures).

Experience only in designing new lighting and mechanical systems for major system replacement is not considered auditing experience.

Scope of Work

A Contracting Agency will directly contact a Qualified Energy Auditor 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 sample Agreement to Agree (Attachment A of this RFP).

Part I of this section describes general requirements that apply to all work performed under any Work Assignment Contract which may result under this RFP.

Part II of this section describes the specific tasks that apply to the level of audit which may be requested by a Contracting Agency.

Qualified Energy Auditors must notify the Department of Energy when they have signed a Work Assignment Contract with an education service district or a school district for SB 1149 audit services. Notice is provided when a copy of the signed Work Assignment Contract indicating the facilities to be audited and the level of audits to be performed is received by the Department of Energy. Notice must be provided prior to the commencement of work.

Part I

Contractors shall perform the following work and meet the following requirements in all Work Assignment Contract(s) resulting from this RFP:

A. General

1. Participate in planning meetings with the Contracting Agency and others as needed to complete the work described in the Work Assignment Contract.
2. Attend an orientation at the Department of Energy that will cover SB 1149 Program Guidelines (see Links, Page 16), the use of the Department of Energy database created for purposes of tracking and monitoring SB 1149 audits and related matters ("Database"), and will cover quality control review procedures for energy audits.
3. Provide all required written reports in accordance with Appendix A, *Audit and Audit Report Requirements*. The format may be varied with prior written approval of the Department of Energy. However, the content of the report(s) can NOT vary.
4. Input audit results into the Database. This requirement applies only when the audit is related to SB 1149 projects.
5. Present the Department of Energy and the SB 1149 Program to education service districts and school districts in a professional, positive manner.

6. Work with the Department of Energy, education service districts and school districts and other consultants to identify and resolve technical and program issues related to the work under Work Assignment Contracts. The Department of Energy will be responsible for making final decisions on all technical and program issues arising from an energy audit.
7. Provide additional calculations and other backup data necessary for thoroughly evaluating Equipment/Systems operation and energy saving measures, and interpreting energy audit results to Department of Energy staff, school district or education service district personnel as requested.
8. Work with Department of Energy staff to resolve problems, issues, and concerns relating to or resulting from the Department of Energy's review of the energy audits that are provided by the contractor. Failure to resolve technical and program issues will result in termination of the Work Assignment Contract and the Agreement to Agree.
9. Make available all pertinent data and information generated or otherwise acquired during performance of Work Assignments Contracts upon request of the Contracting Agency.

B. Client Contact and Preparation for On-site Visit

1. Obtain and review copies of energy audits or studies, if any, previously completed for the Facility that is the subject of Contractor's work under the Work Assignment Contract, including all involved Equipment/Systems, and discuss with Contracting Agency all ideas that Facility owner, manager and staff have considered to save energy and/or to improve comfort. Include evaluation of long-range energy conservation plans and short- and long-term energy conservation priorities (if appropriate for the Work Assignment Contract).
2. Obtain and review two (2) to three (3) years of energy consumption records from the Facility owner, manager or utilities that have provided Facility's energy needs.

Part II

The Contracting Agency and the contractor shall execute a Contractor Work Assignment identifying the required level of audit(s) to be provided by the contractor, the Facility or Facilities to be audited, the schedule for deliverables, payment terms and any other terms and conditions applicable to the work.

Audits

A. Level I Energy Audits. As part of a Level I Energy Audit, Contractor shall assess the Facility's energy cost and efficiency through the analysis of energy bills and a survey of the Facility to identify potential capital improvements that would result in energy and energy cost savings. Contractor shall list and analyze potential capital-intensive improvements for energy efficiency measures identified and shall include an analysis of potential costs (accurate to $\pm 30\%$) and savings associated with the capital-intensive improvements. Contractor shall identify low-cost and no-cost energy efficiency improvement measures for the Facility and a savings and cost analysis for implementation of those measures. As part of the foregoing requirements for a Level I Energy Audit, Contractor shall:

1. Conduct Level I Energy Audit and complete reports according to the requirements of this RFP, including but not limited to this Scope of Work, and Appendix A.

2. Make on-site Facility visits to determine energy savings potential and identify energy-saving measures necessary to achieve such savings potential. Survey the Facility with Facility owner/manager, or assigned representatives. Review the Facility's Equipment/Systems to evaluate and confirm Equipment/System operating profiles, methods of control, quality of maintenance, and Facility energy-consumption changes that have occurred or are anticipated.
 3. Evaluate Facility staff Equipment/Systems operation and maintenance skills. If staff lacks appropriate skills, define training that is needed, such as theory, installation, calibration, and operation of HVAC controls, refrigeration, boiler and/or steam traps.
 4. Identify low-cost or no-cost operation and maintenance energy-saving opportunities pertaining to Equipment/Systems and Facilities structures. Explain in detail how to implement recommendations.
 5. Collect all necessary field data to complete a report that identifies cost-effective energy saving measures. Audits may concentrate on particular Equipment/Systems, or other measures, as directed by the Contracting Agency. The Contractor shall identify existing conditions, recommended changes, cost estimates, potential savings, and simple payback. All project cost analyses shall include cost of material, labor, engineering design, project management and commissioning of measures.
 6. Submit to the Contracting Agency a written report of the audit findings, including all information acquired, conclusions reached, and recommendations, observations, and evaluations made, in accordance with the requirements listed in the Scope of Work Part I, and for a Level I Energy Audit. Contractor shall follow the report format and instructions specified by the Department of Energy in Appendix A. Contractor shall submit reports and proposals required in completing Level I Energy Audits to the Contracting Agency according to the delivery or completion schedule established in the Contractor Work Assignment.
 7. Report summary of proposed energy efficiency measures into Database. Database fields include, but are not limited to:
 - a. Facility name
 - b. Energy efficiency measure recommendations for achieving energy efficiency for Facility and Facility's Equipment/Systems
 - c. Detailed description of energy efficiency measure recommendation implementation processes
 - d. System/Equipment type
 - e. Energy and cost savings estimated to be realized for each energy efficiency measure recommended
 - f. Estimated installation and implementation costs for each energy efficiency measure recommended
 - g. Auditor firm and auditor name
- B. Level II Energy Audits. As part of a Level II Energy Audit, Contractor shall perform all Level I Energy Audit tasks specified under Part II, Section A(1), above, and shall include as part of those tasks a detailed breakdown of energy use within the Facility. Contractor shall include in the Level II Energy Audit a listing of potential capital-intensive improvements for energy efficiency identified through more in-depth and detailed Facility energy data collection and analyses, and shall include an analysis of potential costs (accurate to $\pm 30\%$) and savings associated with the capital-intensive improvements. Contractor shall include a written discussion of any effect of the measures on Facility operation and maintenance procedures. As part of the foregoing requirements for a Level II Energy Audit, Contractor shall:

1. Conduct Level II Energy Audits and complete reports according to the requirements of this RFP, including but not limited to this Scope of Work, and Appendix A.
 2. Submit a written report of the Level II Energy Audit findings, including all information acquired, conclusions reached, and recommendations, observations, and evaluations made, in accordance with the requirements listed in this Part II, Section A(2) to the Contracting Agency. Contractor shall follow the report format and instructions specified by the Department of Energy in Appendix A. Contractor shall submit reports and proposals required in completing Level II Energy Audits to the Contracting Agency according to the delivery or completion schedule established in the Contractor Work Assignment.
 3. Report summary of energy efficiency measures into the Database. Database fields include, but are not limited to:
 - a. Facility name
 - b. Energy efficiency measure recommendations for achieving energy efficiency for Facility and Facility's Equipment/Systems
 - c. Detailed description of energy efficiency measure recommendation implementation processes
 - d. System/Equipment type
 - e. Energy and cost savings estimated to be realized for each energy efficiency measure recommended
 - f. Estimated installation and implementation costs for each energy efficiency measure recommended
 - g. Auditor firm and auditor name
- C. Level III Energy Audits. As part of a Level III Energy Audit, Contractor shall perform all Level I and Level II Energy Audit tasks specified under Part II, Sections A and B, above, and shall include as part of those tasks additional Facility energy data investigation and Facility engineering analysis. Contractor also shall include a more detailed and specific (accurate to $\pm 20\%$) cost and savings analysis for the capital-intensive improvements identified. As part of the foregoing requirements of a Level III Energy Audit, Contractor shall:
1. Confirm pre-authorization for Level III Energy Audits from the Department of Energy prior to commencement of the audit. The Department of Energy will provide written notice of approval to the Contractor, the ESD and the school district.
 2. Perform a scoping study to gather sufficient data to develop and submit a proposal identifying the Equipment/Systems involved and estimate the number of hours a Level III Energy Audit will require, and the type of modeling required. Contractor shall submit to the Department of Energy a written report on the findings of the scoping study and work with the Department of Energy to determine the scope of work for the Level III Energy Audit.
 3. Conduct Level III Energy Audits and complete reports according to the requirements of this RFP, including but not limited to this Scope of Work, Appendix A and Appendix B.
 4. Complete and submit draft Level III Energy Audit to the Contracting Agency within six weeks from the effective date of the Work Assignment Contract. Extensions to this due date may be granted in writing at the discretion of the Contracting Agency by amendment of the Work Assignment Contract.

Each Level III Energy Audit must include project financing options and suggestions for using utility incentive programs where available. Each audit must also include key steps for energy efficiency measure project implementation, such as identification of engineering design needs, potential bid documents needed, type and scope of construction required, and Facility staff training needs. Upon receipt of the draft audit report, the Contracting Agency will schedule a meeting with Contractor to review the draft findings and recommendations, and request clarification or modification of the audit. The final report shall be submitted to the Contracting Agency within two weeks after the date of such review, or at such later time as the Contracting Agency shall establish by written notice to Contractor.

5. Enter summary of energy efficiency measures identified into the Database. Database fields will include, but are not limited to:
 - a. Facility name
 - b. Energy efficiency measure recommendations for achieving energy efficiency for Facility and Facility's Equipment/Systems
 - c. Detailed description of energy efficiency measure recommendation implementation processes
 - d. Equipment/System type
 - e. Energy and cost savings estimated to be realized for each energy efficiency measure recommended
 - f. Installation and implementation costs for each energy efficiency measure recommended
 - g. Auditor firm and auditor name
- D. Modified Levels I and II Energy Audits. Level I and II Energy Audit scopes may be modified only with prior written approval from the Department of Energy. Modifications are based on previous audits and facility conditions. Acceptable reasons for modification of scope include but are not limited to: new building; recently completed building upgrades; previous audits less than 5 years old but missing viable measures.

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 must include all information requested below. Proposals that do not contain all the information requested may be rejected as non-responsive. Proposers must submit the following:

1. Cover Letter/Title Page. One or both, must bear the original signature(s) of the official(s) authorized to sign the proposal. See item A. below.
2. Original proposal, typewritten, single-sided on standard (8½" x 11") paper, maximum ten (10) pages.
3. Resumes as described in item B.4. below, not included in ten-page limit.
4. Work Samples. Maximum of three, not included in ten-page limit. See item B.6. below.
5. Forms 1, 2 and 3. Not included in ten-page limit. See item C. below.
6. Four (4) legible copies of *all* above documents, double-sided where possible.
7. Cost Proposal. May be submitted in separate sealed envelope. See item D. below.

➔ **Proposals and all other documents must be unbound. Do not submit plastic binders, plastic covers, or other materials that are not readily recyclable.**

Proposals must contain the following information:

A. Cover Letter/Title Page

Proposals may include one or both of these pages. Cover letters should be on company letterhead. In the cover letter or on a title page, include the title of the proposal, the name of the proposer (firm or individual), the name, address, telephone number and e-mail address of proposer's contact person, and the date of submission. The authorizing signature should appear on one of these pages. These pages are *not* included in the 10-page limit.

B. Narrative

1. Indicate the level(s) of audit you or your firm is proposing to perform under this solicitation (Level I, II, or III Energy Audits). You or your firm may propose to provide any or all levels of Energy Audits.
2. Indicate the technical services you or your firm specializes in. Include building or facility types, energy system types, data gathering methods used during on-site audits, energy model analysis methods, services that may be similar to the work described in this RFP.
3. Project Experience. Describe prior work performed during the last 10 years that is similar to the work being proposed under this solicitation. Give a brief description of each project. Identify personnel who worked on the project. Identify the client organization, including the name, address and telephone number of the appropriate contact person. List all clients served in the last 24 months, including name, address and type of work performed.
4. Personnel Experience/Qualifications. Submit names and relevant experience of the personnel, including subcontractors, 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, and work experience of the last 10 years. Substitutions of personnel identified herein during performance of Work Assignment Contracts will be allowed only with prior approval of the Department of Energy.
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 ability to coordinate complex projects and work with people.
6. Work Samples. Provide samples of typical written and graphic materials prepared for each audit level being proposed under this RFP (refer to Scope of Work section for description of audit levels). Submit one work sample for each audit level proposed. Work samples must be for facilities within the commercial/institutional sector. Work samples are not considered part of the 10-page limit on proposal length. Do not submit more than three (3) work samples.

C. Proposers must complete and submit the following forms with the proposal, which are included as Pages 17 through 19 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. Using the Minimum Qualifications section of this RFP as a guide, indicate the audit level for which the person qualifies in each area, and an estimate of the number of buildings audited.

Form 2: Software and Equipment. Provide the requested software and equipment information as it applies to the firm, not individuals.

Form 3: 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 (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 will 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.

In addition to hourly rates, provide a per-square-foot rate for energy audits (Level I, II and/or III) of conditioned space. If stated as a range, each range should not vary more than 20% between the high and low price. The per-square-foot fee shall include all costs and all activities except travel.

Note: The cost proposal is a required element of the proposal but is not part of the ten-page limit and will not be a factor in the proposal evaluation process. Cost information (proposed hourly and per-square-foot rates) will be available to Contracting Agencies in the information listed for all Qualified Energy Auditors.

Evaluation Criteria

A team of at least three technical personnel will evaluate proposals ("Evaluation Team"). The evaluation procedure will consist of a determination of Pass/Fail for each of the following criteria. Materials not requested in this RFP will not be considered in the evaluation of proposals. To be listed as a qualified auditor, a firm or individual must Pass **all** of the criteria. To Pass, the proposer must meet all requirements of this RFP for the level of audit proposed. All proposers will be notified of the results of their evaluation.

A. Technical Service Specialties. The proposal demonstrates knowledge and expertise of the firm or individual in conducting on-site energy audits of public buildings and facilities. This includes all Facilities and Equipment/Systems identified herein.

B. Project Experience. The proposer meets or exceeds the requirements for extent of experience in performing the type of work described in this RFP.

- C. Qualifications and Experience of Personnel. The proposal clearly shows the personnel who will be assigned to the contract possess the level of qualifications and expertise that demonstrates the ability to perform the type of work described in this RFP.
- D. Organization, Management, and Administration. The proposer demonstrates the level of skills and experience required to organize, manage and administer 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.
- E. Work Samples. Work samples demonstrate and support the required level of experience and expertise for the work being proposed. Work samples must:
1. Identify and analyze low-cost and/or simple energy efficiency measures as well as high cost energy efficiency measures (e.g. \$50,000 or more).
 2. Provide whole building analysis.
 3. Analyze all energy using systems in the facility.
 4. Provide detailed cost estimates for proposed energy efficiency measures.
 5. Provide detailed descriptions of existing and proposed technologies.
 6. Provide detailed descriptions of calculation methodology and show calculations.
- F. Proposal. The proposal is complete, including all required information, completed forms and work samples. Proposal content is accurate, grammatically correct, clear and concise.
- G. Previous Work as a Qualified Energy Auditor under the SB 1149 Program. If applicable, Department of Energy staff will review any previous work performed by the proposer under the SB 1149 Program. The proposal will be rejected (Fail) if any of the following occurred in the performance of that previous work:
1. Predicted savings for all energy efficiency measures exceeded the energy usage of the facility.
 2. Predicted savings for all energy efficiency measures exceeded 60 percent of the energy usage of the facility.
 3. Predicted savings for any one specific energy efficiency measure exceeded 40 percent of the energy usage of the facility.
 4. Failure to provide documentation of whole building analysis.
 5. Failure to provide sufficient detailed information in audit report (e.g., no predicted footcandle levels if delamping was suggested).
 6. Cost estimates lacked sources; inaccurate cost estimates (i.e. in error by 50 percent or more).
 7. Failure to enter required data into SB 1149 Database.
- H. References. In addition to the internal reference described in G. above, Department of Energy staff will contact at least three of the references listed in the proposal. Questions may include, but are not limited to:
1. Professionalism in interactions with others and on site.
 2. Identification of all energy efficiency measures.
 3. Quality of analysis.
 4. Quality and accuracy of cost estimates.
 5. Quality of audit reports and other work products.

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 Department of Energy.

The Department of Energy reserves the right to issue amendments to this RFP. In the event it becomes necessary to amend any part of this RFP, the Department 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 each specific amendment in the transmittal letter accompanying proposals. If a proposer does not acknowledge any amendment, then that proposer may be deemed non-responsive.

The Department of Energy reserves the right to reject any or all proposals, if such rejection would be in the public interest. The Department of Energy reserves the right to cancel or postpone this solicitation at any time, if such would be in the public interest. The Department of Energy reserves the right to award no Agreements to Agree, or to award multiple Agreements to Agree. Likewise, the Department 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 with a specific contractor.

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

The Department of Energy will follow the provisions of Oregon Administrative Rule 125-248-0240 in the disposition of protests received in connection with this RFP. **Deadline for RFP protests is March 24, 2006 by 5:00 PM Pacific Time.** Copies of the rule are available on the Web site of the Secretary of State www.sos.state.or.us, or from Jan Simmons at 503-378-6968 or toll-free in Oregon 800-221-8035.

Schedule

Interested firms and individuals will have an ongoing opportunity to qualify for the work described in this RFP. This RFP will remain open until the projected end of the SB 1149 Program in 2012. Proposals will be accepted at any time prior to December 31, 2011 and evaluated on a regular basis. The Department of Energy plans to evaluate proposals and update the list of qualified auditors according to the following schedule:

<u>Proposals received by</u>	<u>Evaluated by</u>	<u>List updated by</u>
March 31, 2006	April 28, 2006	May 12, 2006
June 30, 2006	July 28, 2006	August 11, 2006
September 30, 2006	October 27, 2006	November 10, 2006
December 29, 2006	January 26, 2007	February 9, 2006

After December 29, 2006, proposals will be evaluated as they are received. The list of Qualified Energy Auditors will then be updated April 1, 2007 and at the beginning of each calendar quarter thereafter.

Contract Terms and Conditions

The Department 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 B of the sample Agreement to Agree.

Prior to execution of an Agreement to Agree, a qualified auditor must register in the Oregon Procurement Information Network (ORPIN). Information and instructions for self-registration are available at the Department of Administrative Services Web site: <http://orpin.oregon.gov/open.dll/welcome> under "Supplier Registration".

Agreements to Agree will be written initially for a term of two years. The Department of Energy reserves the right to extend any or all Agreements to Agree for additional periods as needed until the end of the SB 1149 Program in 2012. In addition, the Department 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 Department of Energy with certificates of insurance and prior notice of change or cancellation. Contractor shall provide the Department 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 Department of Energy.

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

Questions

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

	<u>Christie Sphoon</u>	<u>Brandon Adams</u>
Telephone:	503-373-7460	503-378-5054
E-mail:	christie.l.sphoon@state.or.us	brandon.adams@state.or.us
Fax:	503-373-7806	Same
Toll-free:	800-221-8035 (Oregon only)	Same
Address:	625 Marion Street NE, Salem, OR 97301-3737	

Submission of Proposals

To be considered in the First Evaluation, proposals must be received at the Salem office of the Department of Energy on or before 5:00 p.m. PT, Friday, March 31, 2006. 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 14 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 Department of Energy.
Address proposals to:

Jan Simmons
Energy Audits for Schools
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97301-3737

Attachments

- Form 1, Form 2 and Form 3
- 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)
- Appendix A: Audit and Audit Report Requirements
- Appendix B: Audit Quality Control Review

Links

Link to SB 1149 at: www.leg.state.or.us/99reg/measures/sb1100.html

Link to SB 1149 Program Guidelines at:

<http://oregon.gov/ENERGY/CONS/SB1149/Schools/docs/Schools1149.PDF>

Form 1 - Experience

Name of Individual: _____

Name of Proposer: _____

Use the definitions in the Minimum Qualifications section of the RFP to complete this form. Check only the highest audit level for which you qualify in each area, and indicate number of buildings audited.

Area of Expertise	Level I Energy Audit	Level II Energy Audit	Level III Energy Audit	Estimated Number of Buildings
Commercial lighting				
Building envelope				
HVAC – package				
HVAC – custom built				
Heating and cooling distribution systems				
Central heating plants				
Central cooling plants				
Controls – DDC				
Controls – Pneumatic				
Motors				
ASD Motor drives				
Compressed air				
Other (Specify)				

Form 3 - 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

AGREEMENT TO AGREE

This Agreement to Agree (“Agreement”) is entered into on _____, 200__, by the State of Oregon acting by and through its Department 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 Department of Energy (individually, “Contracting Agency,” collectively, “Contracting Agencies”) pursuant to which Contractor will render energy audit 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 energy audit 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 Attachment 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.

Notices

All Notices required or otherwise provided under this Agreement shall be provided as follows:

	<u>Contractor</u>	<u>Department of Energy</u>
Name		Christie Sphoon
Address		625 Marion Street NE Salem, OR 97301-3737
Telephone		503-373-7430
E-mail		christie.l.sphoon@state.or.us

Termination

This Agreement may be terminated by mutual written consent of the parties, or by either party for any reason whatsoever.

The Department of Energy may, at its sole discretion, terminate this Agreement upon thirty (30) days written notice to Contractor.

The Department of Energy may terminate this Agreement or any Work Assignment Contract executed pursuant to this Agreement, effective upon delivery of written notice to the Contractor or at such later date as may be established in the notice, under any of the following conditions:

1. Contractor fails to notify the Department of Energy when they have contracted with a school district to provide audit services under this Agreement. Notification must be provided by sending a copy of the properly executed Work Assignment Contract to the Department of Energy representative (see "Notice" section above). The Work Assignment Contract must include the name and address of the facility and the level of audit to be performed. Notification must be received by the Department of Energy prior to the start of work.

2. Contractor fails to respond to the Department of Energy comments during the review process (as described in Appendix B). Examples of such failure to respond include but are not limited to:
 - a. Not making changes or corrections to the audit report as directed in Department of Energy comments,
 - b. Calculations based on unreasonable assumptions (e.g., predicted savings for energy efficiency measures exceeds 40 percent of the energy usage of the facility).
 - c. Incorrect results (e.g., predicted savings for all energy efficiency measures exceeded the energy usage of the facility) that are not corrected.
 - d. Failure to perform a whole building analysis.
 - e. Lack of sufficient detailed information to support recommendations (e.g., no predicted footcandle levels if delamping was recommended).
3. Contractor fails to meet the audit requirements which include:
 - a. All items in the Scope of Work of this RFP.
 - b. All items in Appendix A of this RFP.
4. Contractor fails to retain qualified staff. If more than 20 percent of the staff listed in the original proposal leave the firm, the Department of Energy may terminate this Agreement unless adequate documentation is provided by Contractor to demonstrate that remaining and/or new personnel continue to meet the requirements of this RFP regarding qualifications and experience.
5. Contractor fails to obtain prior written approval for:
 - a. staffing changes as described in paragraph B.4. of the Proposal Content section of this RFP,
 - b. variations from the audit requirements for Level I or Level II audits,
 - c. any change to the audit reports required for any level of audit (Appendix A), or
 - d. any other approvals required by this RFP, an Agreement to Agree or a Work Assignment Contract.
6. Change of ownership.

This Agreement is effective on the date it has been signed by the Department of Energy and Contractor and shall expire two years from that date. This Agreement may be extended or otherwise amended as provided in RFP #07-02 upon mutual consent of the Department of Energy and 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

DEPARTMENT OF ENERGY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Telephone No.: _____

Telephone No.: _____

E-mail: _____

E-mail: _____

Attachment 1 to Agreement to Agree

Agency Contract No. _____

**ENERGY AUDIT 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 the 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 Section 3 of this Work Assignment Contract and 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 Attachment A to Contractor Work Assignment), Exhibit A and Department of Energy's Request for Proposals #07-02. 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

- 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 Department 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 Department 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 Department 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 Department 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

Attachment 2 to Agreement to Agree

Energy Audit Contractor Work Assignment

Work Assignment Contract #

Date: _____

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 Attachment A) and all terms and conditions set forth in that certain Agreement to Agree (including Attachment 1, 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 #07-02. Contractor shall perform the Work and deliver all required documents and reports in accordance with the delivery schedule set forth in RFP #07-02 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).**

____ **Level I Energy Audit**

Facility Name(s): _____

Facility Address(es): _____

Contact Person: _____ Telephone: _____

____ **Level II Energy Audit**

Facility Name(s): _____

Facility Address(es): _____

Contact Person: _____ Telephone: _____

____ **Level III Energy Audit**

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:

PCA or Fund #:

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

Revised 12/01/2005

**Attachment A To Contractor Work Assignment
CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR**

Part A. CONTRACTOR IS A CORPORATION.

The Contractor is a corporation authorized to do business in the State of Oregon.

Contractor Signature _____ Date _____

(If the Contractor signs Part A, the remainder of this Certification Statement does not need to be completed. The Contractor shall return this form to the Agency. Contractor shall complete either Part A or Part B).

Part B. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

(Used when the Contractor is an Independent Contractor or is a professional corporation and meets the following standards.)

1. I am licensed under ORS chapter 701 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 four or more of the following:**
 - 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 _____

Part C. AGENCY APPROVAL.

(Agency completes Part C below when Independent Contractor completes Part B above.)

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 periodic progress payments as outlined in Exhibit A.

Agency Signature _____ Date _____

(Agency's certification is solely for the State's benefit and internal use.)