

**OREGON DEPARTMENT OF ENERGY**  
**Request For Proposals #07-08**  
**Supersedes RFP #03-09**  
**ORPIN No. 330-1000-07**  
**COMMISSIONING SERVICES FOR SCHOOLS**  
**and OTHER PUBLIC BUILDINGS AND FACILITIES**

**May 1, 2007**

**Introduction**

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.

Senate Bill 1149 (SB 1149), enacted in 1999, directs school districts to implement cost-effective energy efficiency measures identified through energy audits. The SB 1149 Program Guidelines require certain energy-related capital projects costing more than \$50,000 to be commissioned.

The State of Oregon, acting by and through its Department of Energy ("Department of Energy") seeks proposals from qualified firms or individuals to provide commissioning services for a) school construction projects that were implemented in accordance with SB 1149, and b) any state building or facility. The Department of Energy plans to establish a pool of qualified commissioning providers to obtain a range of availability and expertise for Oregon schools and state facilities. Interested firms or individuals that specialize in commissioning services are encouraged to submit proposals.

The successful firm(s) or individual(s) will contract directly with the education service districts, school districts, Department of Energy, or any other agency of the State of Oregon and will work cooperatively with school boards, district officials, state agencies, their designated representatives, design professionals, construction managers and contractors. However, this RFP does not confer any contracting authority on any state agency that is not otherwise held by that agency.

**Minimum Qualifications**

To qualify to perform work under this RFP, experience in commissioning HVAC and HVAC controls is required. 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. Proposers are required to have commissioned at least 15 buildings or major HVAC control systems in different buildings within the past six (6) years. Each building should exceed 35,000 square feet and each control system must include more than 250 physical (not virtual) points.

Proposals must clearly document that the Proposer meets all of the following minimum requirements:

1. A technical degree from an accredited four-year school. If a degree is not held, then the total relevant experience of an individual must exceed ten (10) years.
2. Six (6) years of experience in commissioning HVAC and HVAC control systems and in one or more of the following areas: commercial and industrial technology, lighting controls, energy efficiency technologies, and maintenance procedures.
3. At least one individual employed by the firm must be a member of a building commissioning professional association such as Building Commissioning Association (BCA), National Environmental Balancing Bureau (NEBB), or Associated Air Balance Council (AABC).

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, Form 1 and the work samples. The Department reserves the right to limit an individual's or firm's type of work based on qualifications and experience. If a firm does not have any experience in commissioning a specific system, the Department of Energy will not qualify the firm to commission that type of system. Each Agreement to Agree issued under this RFP will specify which Equipment/Systems may be commissioned by the commissioning provider.

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."

### **Qualified Commissioning Providers**

As a result of this RFP, qualified firms and individuals may enter into an "Agreement to Agree" with the Department 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, the Department of Energy and other agencies of the state of Oregon 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 Department of Energy and qualified commissioning provider may contract for the performance of 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 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 a commissioning provider, a Contracting Agency will review the list of providers with whom the Department of Energy has entered into an Agreement to Agree and select a commissioning provider from that list based on one or more of the following criteria in accordance with applicable law:

- (1) Qualifications - Based on the Department of Energy's evaluation of qualifications, the Contracting Agency will select a commissioning provider from the group of providers determined by the Department of Energy to be qualified to commission the type of Equipment or Systems maintained by the Contracting Agency;

- (2) Price – Based on applicable procurement laws and rules, the Contracting Agency will make its selection after directly negotiating a price, or accepting a quote, bid or cost proposal that has been submitted in response to the Contracting Agency’s oral or written invitation or request for quotes, bids or cost proposals;
- (3) Geographic Location/Availability – The Contracting Agency will make its selection after making a determination that the selected commissioning provider is the appropriate choice for obtaining commissioning services and is available to perform those services in the location at which the Contracting Agency maintains its Equipment and Systems to be commissioned.

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**

Funding for commissioning in eligible schools is obtained from the SB 1149 public purpose charge. The actual amount available for Work Assignment Contracts under this RFP is unknown. The Department of Energy estimates that individual Work Assignment Contract amounts may range from \$10,000 to \$45,000. Each Work Assignment Contract will stipulate a maximum Contract amount. However, commissioning providers are not guaranteed any particular volume or dollar amount of work. Actual contracts will depend upon such factors as available funding, program authorization, and volume of Contracting Agency demand for services. As of December 2006, there are approximately 250 projects eligible for commissioning under the SB 1149 program.

### **Scope of Work**

A Contracting Agency will negotiate the details of the statement of work with the selected qualified commissioning provider. Assignments for work will be made by means of a Contractor Work Assignment form containing a statement of work within the scope of the work described below. Contractor Work Assignments will vary according to the commissioning provider’s qualifications and the specific project for which the commissioning provider is providing services but all work must be within the scope of work described below. A fully executed Contractor Work Assignment will incorporate all terms and conditions and other requirements identified in the Agreement to Agree, will be signed by all required parties, 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. Providing the Contracting Agency an unbiased, objective report of the Equipment/Systems including installation, documentation, operation and performance.
3. Preparing a commissioning plan and commissioning specifications relating to the commissioning of all Equipment/Systems in the construction bid specifications (which has its basis of design in the energy audit report) and as determined and requested by the Contracting Agency.
4. Preparing reports for commissioned Equipment/Systems.

5. Coordinating services to accomplish commissioning objectives. The commissioning provider's services in the commissioning of the building shall, except to the extent inconsistent with the requirements of this RFP, the Agreement to Agree and applicable Work Assignment Contract, 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 multiple on-line sites and from the Association of Higher Education Facilities Officers' (APPA) online bookstore at [www.appa.org](http://www.appa.org).

Also recommended from Oregon Department of Energy:

**Commissioning Tool Kit**  
**New Construction Commissioning Handbook for Facility Managers**  
**Retrocommissioning Handbook for Facility Managers**

The above publications are available for download at:

<http://oregon.gov/ENERGY/CONS/BUS/comm/bldgcx.shtml>

- 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 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 construction bid documents. The analysis should also include not only a comparison of Equipment/Systems specifications to the recommended Equipment/Systems in the applicable energy audit but should also include a comparison of Equipment/System usage or strategy (e.g., control strategies) differences between the energy audit and the construction bid documents. The comparisons should be included in the Preliminary and Final Commissioning Reports.
  2. Review the 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 commissioning 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 include a detailed description of the roles and responsibilities of all firms (by industry), a description of the commissioning process, and a schedule of all commissioning activities. The commissioning plan shall identify the following items for each test: a) A list of the equipment to be commissioned b) Function to be tested (e.g., calibration, economizer control, etc.); and, c) Measurable criteria for acceptable results.

The Commissioning Plan must be submitted even if only a single system is being commissioned and/or no interaction with other trades is anticipated. 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.

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. Include copies of minutes in the Final Commissioning Report.
6. Facilitate the integration of the commissioning process into the construction bid specifications and 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. Functional Performance Testing (FPT) services.
  - 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. 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.
  - b. 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. Upon completion of FPT, prepare a Preliminary Commissioning Report that includes Commissioning Plan and FPT deficiency

report forms. These deficiency reports shall include cause of the failure, corrective action to be taken, and schedule for retest.

- c. In coordination with the construction contractors and the construction schedule, develop schedules for all testing and coordinate all testing with the construction schedule.
  - d. With the assistance of the construction contractors and subcontractors, perform all performance tests. Fully document tests for all Equipment/Systems.
10. If required by the Work Assignment Contract and requested by the Contracting Agency, provide 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 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 above, especially where unbalanced conditions would affect the results of the Functional Performance Tests.
11. 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 may be included in the scope of the commissioning provider's work.)
12. Commission at least 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, VFD, etc.
  - b. Hot Water System, including boilers, hot water pumps, valves, piping, VFD, 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 (if previously completed)
13. Verify that training specified in the construction bid documents has been provided to the Contracting Agency.
14. Verify that operations and maintenance materials specified in the construction bid documents are complete and delivered to the Contracting Agency.
15. Document all commissioning procedures completed and submit to Contracting Agency a Final Commissioning Report detailing all commissioning services provided upon completion of all commissioning services. Verify that all deficiencies stated in the Preliminary Commissioning Report have been corrected.
16. 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 commissioning process and commissioning documentation. All documents that are required in the RFP shall be provided to ODOE upon request. Failure to resolve technical and program issues will result in termination of the Work Assignment Contract and the Agreement to Agree. See termination clause section in the Agreement to Agree for more details.
17. Provide other services related to building commissioning. A contracting agency may contract with a Qualified Commissioning Provider to perform work under a Work Assignment Contract that utilizes the training, expertise and experience required to qualify under this RFP. The work may include, but is not limited to document review, site visits, investigation, research, reports, training, presentations or other services related to building commissioning.

### **Exclusions**

The commissioning provider is expressly forbidden to commission the systems that their firm designed as a result of any audit conducted under the Department of Energy's SB 1149 Program. An Energy Service Provider Company (ESPC) may commission work based on their initial audit and the associated design work. However, the Contracting Agency reserves the right to appoint its own commissioning provider for that work, if so desired. An ESPC provider is not permitted to commission the work/project of another ESPC provider.

All ESPC providers must submit proposals and be qualified under this RFP if they are to commission their own ESPC projects.

### **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 below. 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. 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 and bind the Proposer. See Item A below.
2. Original proposal, typewritten, single-sided on standard (8½” x 11”) paper, maximum 10 pages.
3. Resumes as described in Item B.4. below, not included in 10-page limit.
4. Work Samples. Maximum of two (2), not included in 10-page limit. See Item B.6. below.
5. Forms 1 and 2. See Item C. below.
6. Cost Proposal. May be submitted in separate sealed envelope. See Item D. below.
7. One complete copy of *all* documents (1. through 5. above), double-sided where possible.

➡ **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. Include the title of the proposal, the name of the Proposer (firm or individual), the name, street address, e-mail 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 2, indicate the type of work you or your firm are 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 given to the method of commissioning used by your firm (e.g., your firm performs functional tests or monitors the functional test performed by other contractors and subcontractors). Also indicate data gathering methods for the scope of work proposed under the individual Work Assignments.
3. Describe your project experience. Describe prior work performed during the last six (6) years that is similar to the work being proposed under this RFP. In particular, provide a list of school facility projects. In the absence of such projects, provide a list of 15 of the most recent projects of a similar nature and briefly discuss, based on these examples, your ability to successfully commission school facility projects. At a minimum, provide a brief description of each project, current client references (including contact 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. Describe your personnel experience/qualifications. Submit names and relevant experience of the personnel, including employees, other contracted commissioning providers that will be commissioning specific equipment, and 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 six (6) years. In particular, describe the staff qualifications, including education, training, and experience in commissioning schools. 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 Department of Energy. List all individuals who are members of a professional building commissioning association, and the name of the association (i.e., Building Commissioning Association (BCA), National Environmental Balancing Bureau (NEBB), or Associated Air Balance Council (AABC)).

5. Describe your 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. Provide 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 (e.g., 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 (e.g., static pressure control in a VAV system) with more than 250 physical (not virtual) points. Each work sample should include:
  - a. Copy of a Commissioning Plan
  - b. Sample of commissioning specifications for selected equipment
  - c. Sample of functional testing procedures for selected equipment
  - d. Sample of inspection checklist
  - e. Sample of commissioning issues log and/or deficiencies list
  - 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 may be rejected.

- C. Proposers must complete and submit the following forms with the proposal, which are included as Pages 14 and 15 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 Key Person of the firm. 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

List 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, administrative/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 profit 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 and will be incorporated into and apply to the Agreement to Agree, 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/or 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, the experience described below in commissioning HVAC and HVAC controls is required.

To pass this criterion, 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 15 major HVAC control systems in different buildings have been commissioned within the past six (6) years. Each building should exceed 35,000 square feet and each control system must include more than 250 physical (not virtual) points.

The Department of Energy reserves the right to limit the type of commissioning work a firm or individual is qualified to perform under an Agreement to Agree, based on qualifications and experience. If a firm qualifying under the requirements stated above does not have any experience in commissioning a specific system, then the Department of Energy will not qualify the firm to commission that 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.

To Pass this Criterion, the Proposal must clearly show that the Proposer meets the Minimum Qualifications stated on page 1 of the RFP and all other requirements of this RFP, including education, training, and experience.

Determination of whether a firm or individual is qualified will be based on the complete proposal, including the narrative, Form 1, and the work samples.

- 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 of total space) 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.
- E. Proposal. The proposal is complete, including all required information, completed forms, and work samples. Proposal content is accurate, grammatically correct, clear, and concise.
- F. References. The Department of Energy may contact Proposer clients or others, including but not limited to Department staff, to obtain references for Proposer's work.

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 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. At a minimum, an amendment will be posted on the Department of Energy Internet site and on the State of Oregon Procurement Information Network (ORPIN). If amendments to the RFP are issued, each Proposer must acknowledge receipt of each specific amendment in the Proposal Cover Letter. If a Proposer does not acknowledge receipt of 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 RFP 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 between the commissioning firm and the Contracting Agencies .

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 Proposer's understanding of the other Contracting Agencies to be served.

However, the Department 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 Department of Energy and will occur in Salem. Notice of the meeting will be provided one month prior to the meeting.

### **Protests**

- A. Solicitation Protests and Requests for Changes. 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 must 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 Department of Energy will not consider a solicitation protest submitted by any person whose proposal has been received by the Department of Energy. Submission of a proposal constitutes acceptance of all terms and conditions of this RFP in its entirety.
- B. Award Protests. Every Proposer who submits a proposal to the Department of Energy shall be notified of its selection status for an Agreement to Agree and for later Work Assignment Contracts. Any Proposer who claims to have been adversely affected or aggrieved by not being awarded an Agreement to Agree must deliver a written protest to Jan Simmons (see Page 13) within seven (7) calendar days after receiving notification of its selection status. Any Proposer signing an Agreement to Agree who claims to have been adversely affected or aggrieved by not being awarded a subsequent Work Assignment Contract must deliver a written protest to the person designated as point of contact for receipt of protests by the applicable Contracting Agency within the time period specified for protests by that Contracting Agency. The Contracting Agency will review the protest and respond in writing. The Contracting Agency shall not consider any protest submitted after the protest period established by the Contracting Agency. Award protest procedures of Contracting Agencies will govern protest rights applicable to selection of Proposers for Work Assignment Contracts by those Contracting Agencies.

### **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 through December 31, 2011, and will be evaluated as they are received.

The list of Qualified Commissioning Providers (posted on the Department's Internet site) will be updated when a Proposer has:

1. Been approved by the evaluation team,
2. Sent to the Department of Energy proof of insurance coverages as required in Section 12 of the Agreement to Agree, and
3. Signed an Agreement to Agree (Attachment A).

### **Contract Restrictions and Requirements**

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 C of the sample Work Assignment Contract.

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

Agreements to Agree will be written initially for a term of two (2) 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 any 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 needs of Contracting Agencies for services and the funds available to pay for such services. See "Notice" section 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. Contracting Agencies may request professional liability insurance in connection with certain work assignments, and in such case, the 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 the Work Assignment Contract work.

### **Questions**

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

	<u>Andrzej Pekalski</u>	or	<u>Brandon Adams</u>
Telephone:	503-378-5697		503-378-5054
E-mail:	<a href="mailto:andrzej.t.pekalski@state.or.us">andrzej.t.pekalski@state.or.us</a>		<a href="mailto:brandon.adams@state.or.us">brandon.adams@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 Salem, OR 97301-3737		625 Marion Street NE Salem, OR 97301-3737

### **Public Records**

This RFP, and one copy of every proposal received in response to it, together with copies of all documents pertaining to the award of a contract, shall be kept by the Department of Energy and made a part of its records. Requests for inspection of any solicitation file maintained by the Department of Energy may be made to the Department of Energy after Proposers have been notified of their selection status. Requests for inspection of any solicitation or selection information maintained by other Contracting Agencies may be made to the applicable Contracting Agency after Proposers have been notified of their selection status. If a proposal contains any information that may be considered exempt from disclosure under the various exemptions specified in Oregon Public Records Law, ORS 192.410 through 192.505, Proposers must clearly designate any portion of their proposals as exempt, along with a justification and citation to the authority relied upon. Application of the Oregon Public Records Law shall determine whether any information is actually exempt from disclosure. Identifying the proposal in whole as exempt from disclosure is not acceptable.

## **Submission of Proposals**

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  
Commissioning Services RFP  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301-3737

Questions about submission of proposals should be directed to Jan: Telephone: (503) 378-6968  
E-mail: [janis.h.simmons@state.or.us](mailto:janis.h.simmons@state.or.us)

### Attachments

Form 1 and Form 2 (Page 14 and 15)

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: <http://www.leg.state.or.us/99reg/measures/sb1100.html>

(Scroll down the list and click on "SB 1149 - Enrolled")

Link to Program Guidelines for SB 1149 at:

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

Link to Department of Energy commissioning publications at:

<http://oregon.gov/ENERGY/CONS/BUS/comm/bldgex.shtml>

**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

### AGREEMENT TO AGREE Commissioning Services for Schools and Other Public Buildings and Facilities

This Agreement to Agree (“Agreement”) is entered into on \_\_\_\_\_, 20\_\_\_\_\_, 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, the Department of Energy or other agencies of the state of Oregon (individually, “Contracting Agency,” collectively, “Contracting Agencies”) pursuant to which Contractor will render commissioning services and related services to Contracting Agencies.

This Agreement sets forth the general terms and conditions applicable to Contractor under this Agreement to Agree but does not guarantee that any work will be assigned to Contractor. Contracting Agencies at their discretion will enter into binding and enforceable contracts with Contractor 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.

#### **GENERAL AGREEMENT TO AGREE TERMS AND CONDITIONS**

**1. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services under this Agreement or Work Assignment Contracts. 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 Agreement and Work Assignment Contracts is conditioned upon Contractor’s compliance with, and Contractor shall comply with, the obligations intended for contractors under ORS 279C.505, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.

**2. Indemnification.** CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON, THE OREGON DEPARTMENT OF ENERGY, CONTRACTING AGENCIES, AND THEIR MEMBERS, OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, SUITS OR ACTIONS OF WHATSOEVER NATURE, RESULTING FROM OR ARISING OUT OF THE ACTIVITIES OF CONTRACTOR OR ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS AGREEMENT OR ANY WORK ASSIGNMENT CONTRACT.

**3. No Third Party Beneficiaries.** Contracting Agency and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement 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 Agreement.

#### **4. Termination**

This Agreement may be terminated by mutual written consent of the parties.

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 and/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 meet the requirements in the Scope of Work of RFP #07-08.
2. Contractor fails to follow procedural steps as described in the Basic Services section of the Scope of Work. In particular, the Contractor will be terminated if the commissioning plan, functional testing, preliminary, and final reports are not completed.
3. Contractor fails to resolve technical and program issues expressed by the Department of Energy that are related to the commissioning procedures and commissioning documentation.
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, within 30 days of staff change, to demonstrate that the remaining and/or new personnel continue to meet the requirements of RFP #07-08 regarding qualifications and experience.
5. Contractor fails to comply with the following “exclusions” policies:

The commissioning provider is expressly forbidden to commission the systems that their firm designed as a result of any audit conducted under the Department of Energy's SB 1149 Program. An Energy Service Provider Company (ESPC) may commission work based on their initial audit and the associated design work. However, the Contracting Agency reserves the right to appoint its own commissioning provider for that work, if so desired. An ESPC provider is not permitted to commission the work/project of another ESPC provider.

All ESPC providers must submit proposals and be qualified under this RFP if they are to commission their own ESPC projects.

6. Contractor fails to obtain any prior written approval(s) required by RFP #07-08, this Agreement to Agree or any resulting Work Assignment Contract.
7. 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 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: \_\_\_\_\_

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

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

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

Title: Assistant Director, Central Services Div.

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

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

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

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

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Attachment 1 to Agreement to Agree**

**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 Department of Energy's Request for Proposals #07-08. 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, 9, 10, 11, 15, 17, 20, 26 and 27 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.

c. Contractor acknowledges and agrees that Contracting Agency selected Contractor, and is entering into this Work Assignment Contract, because of the special qualifications of Contractor's Key Persons identified in Contractor's proposal. Contractor's Key Persons shall not delegate performance of their powers and responsibilities they are required to provide under this Work Assignment Contract to another Contractor employee(s) without first obtaining the written consent of the Contracting Agency. Further, Contractor shall not re-assign or transfer the Key Persons to other duties or positions such that the Key Persons are no longer available to provide the Contracting Agency with their expertise, experience, judgment, and personal attention, without first obtaining the Contracting Agency's prior written consent to such re-assignment or transfer, which Contracting Agency shall not unreasonably withhold. Notwithstanding the foregoing, Contractor may replace Key Persons without Contracting Agency's consent in the event any Key Persons are no longer available due to death, illness or termination of employment with Contractor. In the event Contractor requests that the Contracting Agency approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons due to death, illness or termination of employment with the Contractor, the Contracting Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Persons. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced.

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 (i) Contractor has the power and authority to enter into and perform this Work Assignment Contract, (ii) this Work Assignment Contract, when executed and delivered is a valid and binding obligation of Contractor, enforceable in accordance with its terms, (iii) Contractor shall perform the Services under this Work Assignment Contract in accordance with the professional standard of skill and care ordinarily exercised by members of Contractor's profession, under similar conditions and circumstances, (iv) Contractor is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services.

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.**

a. **Definitions.** The following terms have the meanings set forth below:

- (i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from this Work Assignment Contract.
- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Contracting Agency or Contractor.
- (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Contracting Agency pursuant to this Work Assignment Contract.

b. **Work Product.** All Work Product created by Contractor pursuant to this Work Assignment Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Contracting Agency. Contracting Agency and Contractor agree that such original works of authorship are "work made for hire" of which Contracting Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to this Work Assignment Contract is not "work made for hire," Contractor hereby irrevocably assigns to Contracting Agency any and all of its rights, title, and interest in all original Work Product created pursuant

to this Work Assignment Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Contracting Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Contracting Agency. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Work Assignment Contract, 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.

**c. Contractor Intellectual Property.** In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to Contracting Agency an irrevocable, non-exclusive, transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, including the right of the Contracting Agency to authorize contractors, Contractors and others to do the same on Contracting Agency's behalf.

**d. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the Contracting Agency's behalf and in the name of the Contracting Agency, an irrevocable, non-exclusive, transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of the Contracting Agency to authorize contractors, consultants and others to do the same on Contracting Agency's behalf.

**e. Contractor Intellectual Property-Derivative Work.** In the event that Work Product created by Contractor under this Work Assignment Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Contracting Agency an irrevocable, non-exclusive, transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, including the right of the Contracting Agency to authorize others to do the same on Contracting Agency's behalf.

**f. Third Party Works-Derivative Work.** In the event that Work Product created by Contractor under this Work Assignment Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Contracting Agency's behalf and in the name of the Contracting Agency an irrevocable, non-exclusive, transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Contracting Agency's behalf.

**g. Contractor Use of Work Product.** Notwithstanding anything to the contrary in this Section 10, Contractor may refer to the Work Product in its brochures or other literature that Contractor utilizes for advertising purposes.

## 11. Indemnity

**a. CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY.** CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON, THE OREGON DEPARTMENT OF ENERGY, CONTRACTING AGENCIES, AND THEIR MEMBERS, OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, SUITS OR ACTIONS OF WHATSOEVER NATURE, RESULTING FROM OR ARISING OUT OF THE ACTIVITIES OF CONTRACTOR OR ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THE WORK ASSIGNMENT CONTRACT.

**b. CLAIMS FOR PROFESSIONAL LIABILITY.** CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON, THE OREGON DEPARTMENT OF ENERGY, CONTRACTING AGENCIES, AND THEIR MEMBERS, OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, SUITS OR ACTIONS ARISING OUT OF THE PROFESSIONAL NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS AND SUBCONTRACTORS AGENTS OR EMPLOYEES IN PERFORMANCE OF PROFESSIONAL SERVICES UNDER THE WORK ASSIGNMENT CONTRACT.

**c. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11.a OR 11.b., CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE STATE OF OREGON, THE OREGON DEPARTMENT OF ENERGY, CONTRACTING AGENCIES AND THEIR MEMBERS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE SERVICES, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO CONTRACTING AGENCY BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE CONTRACTING AGENCY'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT CONTRACTING AGENCY SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

**d. DEFENSE QUALIFICATION.** NOTWITHSTANDING CONTRACTOR'S FOREGOING DEFENSE OBLIGATIONS, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND ANY CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, OR ANY CONTRACTING AGENCY, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, OR OF ANY CONTRACTING AGENCY, WITHOUT THE PRIOR WRITTEN CONSENT OF THE OREGON ATTORNEY GENERAL, OR THE CONTRACTING AGENCY'S LEGAL COUNSEL, AS

APPLICABLE. THE STATE OF OREGON OR ANY CONTRACTING AGENCY MAY, AT ANY TIME AT ITS ELECTION ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THEY DETERMINE THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON OR CONTRACTING AGENCY, AS APPLICABLE, OR THAT CONTRACTOR IS NOT ADEQUATELY DEFENDING INTERESTS OF THE STATE OF OREGON OR CONTRACTING AGENCY, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE OR THAT IT IS IN THE BEST INTERESTS OF THE STATE OF OREGON OR CONTRACTING AGENCY TO DO SO. THE STATE OF OREGON AND ALL CONTRACTING AGENCIES RESERVE ALL RIGHTS TO PURSUE ANY CLAIMS THEY MAY HAVE AGAINST CONTRACTOR IF THEY ELECT TO ASSUME THEIR OWN DEFENSE.

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 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 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 Services under this Work Assignment Contract. 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, and Contractor shall comply with, the obligations intended for contractors under ORS 279C.505, 279C.515, 279C.520, and 279C.530, 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, 26 and 27.
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. **Confidentiality and Non-Disclosure**
- a. Confidential Information.** Contractor acknowledges that it and its employees and agents may, in the course of performing their responsibilities under this Work Assignment Contract, be exposed to or acquire information that is confidential to Contracting Agency. Any and all information that Contracting Agency provides to Contractor or its employees or agents in the performance of this Work Assignment Contract, as well as all reports and other documents and materials (including software) that result from Contractor's use of such information and any other Work Product that the Contracting Agency deems to be confidential, is confidential information of Contracting Agency ("Confidential Information"). Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by Contracting Agency to others without restrictions similar to those imposed by this Work Assignment Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Work Assignment Contract; (iv) is obtained from a source other than Contracting Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Contracting Agency; or (vi) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure.** Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and shall not, without Contracting Agency's prior written consent, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of,

give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to Contracting Agency hereunder. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist Contracting Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Contractor shall advise Contracting Agency immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms this Section 27(b), and Contractor shall, at its expense, cooperate with Contracting Agency in seeking injunctive or other equitable relief in the name of Contracting Agency against any such person. Contractor agrees that, except as directed by Contracting Agency, Contractor will not at any time during or after the term of this Work Assignment Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Work Assignment Contract, and that upon termination of this Work Assignment Contract or at Contracting Agency's request, Contractor shall turn over to Contracting Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

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

Attachment 2 to Agreement to Agree

**Building 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 a state tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620; (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 #07-08. Contractor shall perform the Work and deliver all required documents and reports in accordance with the delivery schedule set forth in RFP #07-08 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:**

**PCA:**

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

Revised December 5, 2006

**EXHIBIT C**

**CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR  
PERSONAL/PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_**

***Part A. CONTRACTOR IS A CORPORATION.***

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

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

*(Contractor completes either Part A or Part B. If the Contractor signs Part A, the remainder of this Certification Statement does not need to be completed.)*

***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 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.)*