

**STATE OF OREGON  
STATEWIDE INFORMATION TECHNOLOGY QUALITY ASSURANCE  
SERVICES  
PRICE AND SERVICES AGREEMENT # \_\_\_\_\_**

**RECITALS**

- A. The State of Oregon, acting by and through DAS (defined below) desires to engage Contractor (defined below) to provide a Price and Services Agreement (“Agreement”) for Information Technology-related Quality Assurance Services (“Services”) to enable DAS to achieve specific business and State of Oregon mission objectives.
- B. Contractor is one of the successful Proposers in connection with the RFP # 102-1473-08.
- C. Contractor desires to perform the Services for the State of Oregon and its Authorized Purchasers pursuant to the terms and conditions in the Agreement, including without limitation good faith cooperation with DAS and the other Contractors in the “Intelligent Rotation Process” that DAS will use to administer the multiple Services agreements that will be in effect at the same time.

This Agreement is entered into on the date of execution by and between the State of Oregon acting by and through its Department of Administrative Services State Procurement Office (“DAS”), and \_\_\_\_\_, a \_\_\_\_\_ corporation (“Contractor”) for the purpose of identifying:

- (1) the form of Work Order Contract (“WOC”) to be used;
- (2) the terms and conditions applicable to subsequent WOCs entered into between Authorized Purchasers and Contractor pursuant to which Contractor will render Services to Authorized Purchasers; and
- (3) the process through which the WOCs will be created.

Authorized Purchasers and Contractor intend to enter into binding and enforceable contracts for Services by execution of a WOC substantially in the form attached hereto as Attachment A that specifies the work to be performed and makes the standard terms and conditions set forth in Attachment A attached hereto and incorporated herein applicable to the Services. Each such WOC so executed shall create a separate contract between the Authorized Purchaser and Contractor (consisting of the WOC and its related Statement of Work (“SOW”).

The Authorized Purchaser will coordinate directly with the Contractor for execution of the Work Order Contract for the required Services. Authorized Purchasers are responsible for selecting and contracting with Contractor in accordance with the process described above. ORCPP Participants are responsible for selecting and contracting with Contractors in all categories in accordance with the above-described process as well as in accordance with the

participant's own statutes, rules and policies.

## I. DEFINITIONS

**Authorized Purchaser** means the State of Oregon acting by and through the Department of Administrative Services, and Authorized Agencies submitting Work Order Contract requests pursuant to DAS purchasing authority and direction and Independent Agencies submitting Work Order Contract requests pursuant to their independent purchasing authority. Authorized Purchasers also include ORCPP Participants with appropriate purchasing authority under their applicable statutes, rules, regulations or ordinances that submit Work Order Contract requests to Contractor.

**DAS** is an acronym for State of Oregon, Department of Administrative Services.

**DAS SPO** is an acronym for DAS State Procurement Office.

**Effective Date** means the date on which this Agreement is fully executed and approved in accordance with applicable laws, rules and regulations.

**EISPD** is an acronym for DAS Enterprise Information Strategy and Policy Division.

**Enterprise Statement of Work** is Attachment A attached to and incorporated in this Agreement. It sets out the standard minimum tasks related to the delivery of QA Services that will be required in each Statement of Work developed and implemented under this Agreement.

**ESOW** is an acronym for Enterprise Statement of Work.

**Independent Agencies** means those State Agencies with independent procurement authority pursuant to ORS 279A.025, ORS 279A.050 and other provisions of applicable State law.

**Information Technology** means ("IT") and includes without limitation, all present and future forms of hardware, software and services for data processing, office automation and telecommunications (Oregon Revised Statute 291.038)..

**Intelligent Rotation System** is the means through which DAS SPO will administer the multiple IT QA Services price and services agreements that result from the RFP. EISPD and Authorized Purchasers will assist DAS SPO in administering the IRSYS.

**IRSYS** is an acronym for Intelligent Rotation System.

**IT** is an acronym for Information Technology.

**Major IT Project** has the meaning given that term in the context of DAS QA Policy 107-004-030, as amended from time to time, and which currently uses value in excess of \$1,000,000.00 as the threshold to determine whether a single IT project, a phased IT project, or a portfolio of IT projects constitutes a Major IT Project.

**ORCPP Participant** means members of the Oregon Cooperative Purchasing Program (ORCPP) such as Independent Agencies or other governmental entities who have entered into an intergovernmental agreement with DAS to use DAS' contracts and other entities permitted by statute to use DAS contracts. Participants may include but are not limited to: Independent Agencies, cities, counties, school districts, special districts, Qualified Rehabilitation Facilities (QRF's), residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, American Indian tribes or agencies, and quasi-State Agencies such as Oregon Health Sciences University with statutory authority or autonomy to solicit for services independently. A listing of current ORCPP Participants is found at:

<http://www.oregon.gov/DAS/SSD/SPO/coop-menu.shtml>

**ORPIN** means the Oregon Procurement Information Network which is the State of Oregon's automated procurement system and can be found at

<http://orpin.oregon.gov/open.dll/welcome>

**Proposal** means Contractor's written offer submitted in response to the RFP, including all necessary attachments, that is attached hereto as Attachment E.

**PSA** is an acronym for Price and Services Agreement.

**Work Order** means the Work Order Contract request documents submitted to Contractor for the purchase of Services that is attached hereto as Attachment A.

**QA** is an acronym for Quality Assurance.

**Quality Assurance** means QA and the QA-related terms as defined and discussed in DAS QA Policy 107-004-030 and the ESOW.

**Rate Card** means the list of Maximum-Not-To-Exceed Hourly Rates that Authorized Purchasers and Contractor will use to establish prices for required deliverables.

**RFP** means the entire solicitation document, including all Addenda, appendices, attachments, exhibits, parts, and sections, that is attached hereto as Attachment D.

**Services** is a term that means the IT QA and QA-related consultation services Contractor will provide to Authorized Purchasers under the Contract.

**State** means the State of Oregon acting through DAS.

**State Agency** means any state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

**Statement of Work** means all Services required to be performed under a Work Order Contract and includes, without limitation, delivery schedules, a description of the Services, and other terms specifically related to performance of the Services.

**VCAF** is an acronym for Vendor Collected Administration Fee.

**WOC** is an acronym for Work Order Contract

**Work Order Contract** means the exhaustive collection of documents through which an Authorized Purchaser and Contractor will execute an engagement for QA Services. The Work Order is the document that will initiate the Work Order Contract process.

**Written** or **Writing** means conventional paper documents, whether hand written, manuscript or printed, in contrast to spoken words. It also includes facsimile documents or electronic transmissions to the extent permitted by the solicitation document or contract.

## **II. PRICE AND SERVICES AGREEMENT TERMS AND CONDITIONS**

1. **TERM OF PRICE AND SERVICES AGREEMENT:** The initial term of the Agreement shall be FIVE (5) years, beginning on the Effective Date. Upon concurrence of the parties, the PSA may be extended for additional terms ("Extension Terms"). Provided, however, that the maximum duration of the Price and Services Agreement, including all extensions, shall be ten (10) years. DAS reserves the right to renegotiate price.

2. **EXTENSIONS:** DAS shall notify Contractor in writing of the DAS' intent to extend the PSA ("Renewal Notice") prior to the expiration of the then-current term. DAS, in its sole discretion, may extend the term of the Agreement to meet the needs of the State. If DAS elects to extend the Agreement, the terms and conditions and pricing of the PSA shall remain the same during any such Extension Term(s), unless DAS and the Contractor agree on different rates pursuant to 2.3.1 below.

3. **CONTRACTOR PRICES AND RATES:** Subject to any retention amounts, invoice requirements and discounts off the maximum hourly rates, Authorized

Purchaser will compensate Contractor for accepted Services based upon the applicable prices and rates as reflected in Attachment C to the Price and Services Agreement, the Rate Card. The Rate Card is comprised of Services line items, maximum-not-to-exceed hourly rates (“maximum rates”), and guaranteed minimum discounts. Authorized Purchasers may compensate Contractor on a deliverables-based payment schedule and may receive discounted hourly rates below the maximum hourly rates. DAS and Contractor may periodically adjust prices and rates according to this Price and Services Agreement. DAS and Contractor may also agree to prices for particular Work Order Contracts based upon pricing methods as reflected in Section 3.1, below, Price Guarantee.

**3.1 PRICE GUARANTEE.** Contractor warrants that it shall extend best available pricing to the State of Oregon for QA Services covered by this Agreement, as compared to Contractor’s other customers in the Pacific Northwest area who provide Contractor with comparable potential for business volume for like services and skill sets implicated under this Agreement, subject to any of Contractor’s pricing obligations under its established state government programs, if any, and to the federal government. Contractor will utilize all accessible and applicable business partner programs and pricing mechanisms in order to optimize pricing and terms on behalf of the State, including without limitation other pricing methods sanctioned by Contractor for the benefit of its state government clients, e.g., the Western States Contracting Alliance (WSCA).

**3.2 PRICE PROTECTION / ADJUSTMENTS.** Authorized Purchaser will not pay any additional costs above those costs provided for in the PSA. With respect to particular purchases of Services that are the subject of a Work Order Contract, the price shall be based upon the applicable rate in Attachment C, Rate Card, or the price shall be the lower price agreed to between Authorized Purchaser and Contractor as set forth in a Work Order Contract. If the WOC sets forth a lower price than the given fixed price identified in Contractor’s quote to the Authorized Purchaser or applicable maximum hourly billing rate identified in Attachment C, then the Work Order Contract shall bind the Contractor. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Subject to any of Contractor’s pricing obligations under its established state government programs, if any, and to the federal government, Contractor’s hourly rates reflected in PSA Attachment C, the Rate Card, shall remain fixed during the first two years of the initial term of this PSA. Thereafter, Contractor may use PSA section 19.1.5 to request an amendment to change the hourly rates reflected in the Rate Card. DAS SPO will not consider any such requests more frequently than once annually and at the time of any PSA extension opportunity.

Price increase requests must be based upon demonstrable market changes. The percentage increase shall bear a rational nexus to such market changes, and shall not cause Rate Card rates to exceed Contractor’s published state and local government prices, if any.

Any price decrease effectuated during the PSA period by reason of market change will be passed on to Authorized Purchaser by reduction in the applicable maximum rates identified in Attachment C, subject to any of Contractor's pricing obligations to the federal government. This decrease will be effective on the date the price decrease is announced to the general public.

#### 4. EFFECT OF EXPIRATION OR TERMINATION; TRANSITION UPON TERMINATION OR EXPIRATION OF WORK ORDER CONTRACT.

4.1 Upon termination or expiration of the Price and Services Agreement, Contractor shall continue to provide the Services and meet its obligations under any applicable Work Order Contract issued prior to expiration or termination of the PSA; unless such Work Order Contract is otherwise terminated pursuant to the terms and conditions of the WOC. If Contractor provides any Authorized Purchaser with Services under an existing Work Order Contract during a period following the termination or expiration of the PSA, the terms and conditions and pricing of such WOC shall remain in effect, including reporting requirements.

4.2 The expiration or termination of the Price and Services Agreement shall be without prejudice to the rights of the parties accrued up to the date of such expiration or termination.

5. **SERVICES TO BE FURNISHED:** During the term of the Price and Services Agreement, Contractor agrees to provide all Services ordered by Authorized Purchasers in accordance with the terms and conditions of the Agreement, including the ESOW, and the applicable Work Order Contract. Contractor shall not perform work under this PSA for an Authorized Purchaser unless the Authorized Purchaser has an existing Work Order Contract with Contractor. Each Work Order Contract will include its own specific Statement of Work. **Individual Work Order Contracts that exceed \$100,000 may require the Attorney General's legal sufficiency approval, and those that exceed \$150,000.00 may also require the contracting approval of the DAS SPO.**

6. **WORK ORDER CONTRACTS:** Contractor shall not accept any Work Order Contract that does not comply with the following requirements:

6.1 **AUTHORIZED PURCHASERS:** The Authorized Purchasers will use the Work Order form set forth herein as Attachment A to order Services under the PSA unless otherwise authorized by DAS. Subject to the provisions of the Anticipated Amendment provisions of the Price and Services Agreement, PSA subsection 19.1, and the Anticipated Amendment provisions in a Work Order Contract, no language in a Work Order Contract submitted shall vary, amend, modify, or add terms or conditions to the Price and Services Agreement or a Work Order Contract. Otherwise, the operative provisions in Work Orders shall be limited to: designation of Authorized Purchaser and its authorized representative; Contractor key personnel, itemization of Services (offered under the terms of the Price and Services Agreement) ordered; Statement of Work for

Services, delivery schedules in accordance with the terms of the Price and Services Agreement; deliverables based payment schedules; applicability statements pertaining to relevant Work Order Contract exhibits; the location at which Contractor will perform Services; and Authorized Purchaser's invoicing address.

## 6.2 MANDATORY WORK ORDER CONTRACT LANGUAGE:

**{RESERVED}.**

7. **SALES TO UNAUTHORIZED PURCHASERS:** It is the Contractor's responsibility to verify purchasers' authority to contract pursuant to the Price and Services Agreement. If Contractor is found to have entered into two or more Contracts under this Price and Services Agreement with an entity other than an Authorized Purchaser, Contractor will be deemed to be in material breach of the Agreement.

8. **LIABILITY OF AUTHORIZED PURCHASERS:** Contractor acknowledges and agrees that each Authorized Purchaser shall bear the liability on Work Order Contracts entered into for purchases by the respective Authorized Purchaser. Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Products and Services and the resulting contractual relationship, if any, with each such contracting party.

## 9. INDEMNIFICATION:

9.1 **General Indemnification.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Authorized Purchaser and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Price and Services Agreement and resulting Work Order Contract; provided that Contractor shall have no obligation to indemnify Authorized Purchaser or the State of Oregon from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of Authorized Purchaser or the State of Oregon, and their officers, employees or agents.

9.2 **Control of Defense and Settlement.** Contractor's obligation to indemnify as set forth in Section 9.1 is conditioned on the State of Oregon providing to Contractor prompt notification of any claim or potential claim of which State of Oregon becomes aware. Moreover, the State of Oregon shall provide reasonable assistance in defense of such claim at Contractor's expense. Contractor shall have control of the defense and settlement of any claim that is subject to Section 9.1; however, neither Contractor nor any attorney engaged by

Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

#### 10. TERMINATION OF PRICE AND SERVICES AGREEMENT:

10.1 The Price and Services Agreement may be terminated at any time by mutual written consent of Contractor and DAS, or DAS may unilaterally terminate the Price and Services Agreement for convenience upon thirty (30) days' notice to Contractor.

10.2 DAS may terminate the Price and Services Agreement immediately upon notice to Contractor, or after expiration of the cure period provided section 2.13.3 below, or at such later date as it may establish in such notice, upon the occurrence of either of the following events: (i) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the purchase of Services offered under the Price and Services Agreement is prohibited; or (ii) Contractor breaches any material provision of the Price and Services Agreement or Work Order Contract(s) entered into there under, and such breach is not cured within fifteen (15) days of the date of the written notice of such breach provided to Contractor, unless DAS provides Contractor a longer cure period.

10.3 Contractor may terminate the Price and Services Agreement if DAS breaches any material provision of the Agreement, and such breach is not cured within fifteen (15) days of the date of the written notice of such breach provided to DAS, unless Contractor provides DAS a longer cure period.

10.4 Upon receipt of written notice of termination, Contractor shall stop entering into any new Work Order Contracts under the Price and Services Agreement as directed by DAS.

11. REMEDIES: In addition to any other remedies provided in this Price and Services Agreement including any rights of termination, the following remedies are available for a breach of a material provision of the Agreement:

11.1 DAS REMEDIES: In the event Contractor is in breach of any material obligation of this Price and Services Agreement, Contractor shall be liable for any direct damages arising out of or related to the breach.

11.2 CONTRACTOR'S REMEDIES. In the event DAS terminates this Price and Services Agreement for convenience, or in the event that DAS is in

breach of a material obligation under this Agreement or any Work Order Contract entered into there under, Contractor's sole monetary remedy shall be the total fees earned for Services provided to Authorized Purchasers under applicable Work Order Contracts. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

11.3 NO PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS PRICE AND SERVICES AGREEMENT OR CONTRACTS ENTERED INTO UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL NOT APPLY TO ANY PARTY'S (A) ABILITY TO OBTAIN INJUNCTIVE OR OTHER EQUITABLE RELIEF; AND (B) INDEMNIFICATION OBLIGATIONS UNDER SECTION 9. Nothing in this Price and Services Agreement and a Work Order Contract shall limit Contractor's liability with respect to death or personal injury caused by or arising from Contractor's negligence or willful misconduct.

12. NOTICES: All notices required to be given by Contractor under the Price and Services Agreement shall be in writing and addressed to the DAS point of contact identified by the DAS SPO. All notices required to be given by DAS shall be in writing, addressed to the Contractor's representative, and sent to the address specified by Contractor. Mailed notices shall be deemed given five (5) calendar days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Electronic notices shall be deemed given upon electronic or personal confirmation of successful transmission to the designated email address or fax number.

13. ACCESS TO RECORDS: Contractor shall maintain all fiscal records relating to the Price and Services Agreement in accordance with generally-accepted accounting principles, and shall maintain all other records relevant to Contractor's performance of the Agreement (collectively, "Records"). The Authorized Purchaser and its duly authorized representatives shall have access to Records for purposes of examination and copying. Contractor shall retain and keep accessible all Records for a minimum of three (3) years, or such longer period as may be required by applicable law following expiration or termination of the Price and Services Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price and Services Agreement, whichever date is later.

14. SEVERABILITY: If any provision of the Price and Services Agreement is declared by a court of competent jurisdiction to be illegal, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

15. SURVIVAL: Termination of the Price and Services Agreement shall not extinguish or prejudice the DAS's right to enforce the warranty, access to records, indemnification, governing law, venue, consent to jurisdiction, and remedies provisions.

16. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under the Price and Services Agreement except as expressly permitted by this Agreement, in whole or in part, without the prior written approval of DAS. Further, no express approval in this Price and Services Agreement or other such written approval shall relieve Contractor of any obligations under the Agreement and Work Order Contract, and any delegate shall be considered the agent of Contractor. The provisions of each Work Order Contract shall be binding upon and shall inure to the benefit of the parties to the Work Order Contract and their respective successors and permitted assigns.

17. GOVERNING LAW: The Price and Services Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without regard to principles of conflicts of law.

## 18. DISPUTE RESOLUTION

**18.1 Venue: Consent to Jurisdiction (State Agencies).** Subject to the alternative dispute resolution process in PSA section 18.3, any claim, action, suit or proceeding (collectively, "Claim") between the DAS and Contractor that arises from or relates to the Price and Services Agreement 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 unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY SUBMITTAL OF ITS SIGNED PROPOSAL, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. 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.

**18.2 Venue: Consent to Jurisdiction (ORCPP).** Subject to the alternative dispute resolution process in PSA section 18.3, any Claims between Contractor and an ORCPP Participant that is not a state agency that arise from or relate to the Price Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Participant has its principal office, or at such ORCPP Participant's option, within such other county as such ORCPP Participant shall be entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the

District in which such ORCPP Participant resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP Participant's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

### **18.3 Alternative Dispute Resolution.**

18.3.1 Any dispute or claim arising out of or relating to the PSA or a Work Order Contract resulting therefrom shall be submitted first to non-binding mediation (unless either party elects to forego mediation by initiating a written request for litigation) and if mediation is not successful within 90 days after the issuance by one of the parties of a request for mediation then to litigation. Mediation, if selected, may take place at a location to be designated by the parties.

18.3.2 Either party may seek to enforce any written agreement reached by the parties during mediation in accord with section 18.1 or section 18.2, as appropriate.

19. **MERGER CLAUSE; AMENDMENT; WAIVER:** The Price and Services Agreement constitutes the entire agreement between the Contractor and the DAS on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Price and Services Agreement. No waiver, consent, modification or change of terms of the Price and Services Agreement (collectively, "Amendment") shall be binding upon either party to: (a) the Price and Services Agreement or (b) Contracts entered into under the PSA, unless such Amendment is in writing, is signed by both parties to the Price and Services Agreement, and all necessary approvals have been obtained. Amendments shall be effective only in the specific instance and for the specific purpose given. No amendment shall be effective until all requisite signatures and approvals are obtained. Emails with a typed name or signature block do not amount to a fully executed Amendment. The failure of DAS to enforce any provision of the Price and Services Agreement shall not constitute a waiver by DAS of that or any other provision.

19.1 **ANTICIPATED AMENDMENTS.** The parties have determined that during the term of the Price and Services Agreement or a Work Order Contract, the parties may need to modify selected terms, conditions, price(s) and types of services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

19.1.1 Amendments required as a result of necessary changes in the State's business process that may restructure a State Agency or other Authorized Purchasers;

19.1.2 Amendments to accommodate DAS SPO contract administration requirements; including without limitation the Intelligent Rotation System and imposition or modification of VCAF provisions;

19.1.3 Amendments to the Statement of Work of a Work Order Contract to add, delete, or otherwise modify Services within the scope of the RFP, the Price and Services Agreement, a Work Order Contract and the Statements of Work of Work Order Contracts;

19.1.4 Amendments to extend the term of the Price and Services Agreement and amendments to extend the term of a Work Order Contract; and

19.1.5 Amendments to change pricing.

## 19.2 CHANGE CONTROL PROCEDURES

**19.2.1 Written Change Requests.** Either DAS or Contractor may request a change to this Price and Services Agreement, including all Attachments or Exhibits hereto, by submitting a written change request describing the change requested. DAS' and Contractors' Authorized Representatives will review the written change request and either mutually approve it for further analysis or reject it.

**19.2.2 Analysis of Change Requests; Change Orders.** The party to whom the written change request has been submitted, if it has not been rejected pursuant to Section 19.2.1, shall analyze such change request to determine the effect that the implementation of the change will have on the Statement of Work. If any change is approved, the party that submitted the request for the change shall prepare a written change order, detailing all modifications to the scope, Services, price, or other terms (the "Change Order"). A Change Order at a minimum shall contain the following information:

19.2.2.1 The date of issuance of the Change Order;

19.2.2.2 A detailed description of the modifications to Services or pricing, under the Change Order;

A Change Order shall alter only that portion of the Price and Services Agreement to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement and apply only to future resulting Contracts. Both parties must sign the Change Order to authorize the changes into this Price and Services Agreement. Except as provided in subsections to this 19.2.2.5, no Services shall be performed pursuant to the Change Order and no payment shall be made on account of the

Change Order until the Change Order is fully executed and approved as an Amendment.

The following activities or transactions may be effected by the parties through a Change Order without resort to the Amendment process:

- (1) Substituting key persons.
- (2) Project Management corrective actions that do not affect price or that will not remove or otherwise modify deliverables.

## 20. VOLUME SALES REPORTING AND VENDOR COLLECTED ADMINISTRATION FEE

### [RESERVED]

## 21. INTELLIGENT ROTATION SYSTEM (“IRSYS”) AND BEST VALUE COMPETITIVE (“BVC”) PROCESSES

**21.1 Multiple Awards.** In the event of multiple awards, an Authorized Purchasing Agency shall select a particular QA Services Contractor for a single IT project, phased IT project or portfolio of IT projects either through an intelligent rotation system (“IRSYS”) process for State Agency Major IT Projects or a “best value” competitive (“BVC”) process within the pool of Price and Services Agreement (“PSA”) holders for all other engagements.

**21.2 IRSYS Process for State Agency Major IT Projects.** A state agency seeking to acquire QA services for a Major IT Project will rely upon an intelligent rotation of PSA holders to identify the contractor who will have the “right of first offer” (“ROFO”) concerning the planned project. DAS SPO, the affected State Agency Authorized Purchaser and any applicable Oversight Agency (“OA”), e.g., DAS EISPD for executive branch state agencies, will determine whether the identified contractor and its project offer are acceptable. Appendix F to this PSA depicts the IRSYS work flow.

**21.2.1 Preliminary Selection of a ROFO Contractor.** The intelligent rotation will be comprised of preliminary selection of the next eligible contractor drawn from a sequential array of the QA Services contractors. That contractor will have the ROFO concerning the planned project work. If the ROFO contractor is deemed acceptable, the parties may execute a WOC for the planned project. If the ROFO contractor is not deemed acceptable, or declines the opportunity, the State Agency Authorized Purchaser may either resort to the BVC process under this agreement to acquire QA Services for its planned project from one of the other contractors, or decide to independently solicit for such services in compliance with its standard procurement policies and practices. If the ROFO contractor declines the opportunity or is deemed acceptable, that contractor will move to the end of the intelligent rotation for the next State Agency Major IT Project opportunity. If the ROFO contractor submits an offer that is rejected, then

that contractor will retain its ROFO position for the next State Agency Major IT Project opportunity.

21.2.2 Vetting the ROFO Contractor. DAS SPO, the affected State Agency Authorized Purchaser and any involved OA will examine the ROFO contractor selection through diverse vetting factors to determine whether the purchasing agency may consider an offer from that contractor for the desired work, and if the contractor's project offer is acceptable. These vetting factors will include without limitation:

1. Contractor's domain knowledge and expertise;
2. Contractor's general knowledge and expertise with government processes and its particular knowledge and expertise with the Purchasing Agency; and a
3. Conflicts assessment to determine the presence of actual or potential conflicts of interest. This assessment includes without limitation consideration of the Contractor's parallel engagements, if any, that may affect the desired work;
4. Offer assessment to determine the suitability and value of Contractor's offer by evaluating the proposed cost, which may affect the Authorized Purchaser's project budget; the approach proposed for the desired work, which may impact agency resources; the Contractor's responsiveness to identified requirements; and the Contractor's demonstrated capacity to perform well.

21.2.3 Initial IRSYS Rotation; Refresh. DAS SPO will base the initial IRSYS sequential array of QA Services contractors upon screening and selection results from the review and ranked evaluation of Proposals submitted in response to the RFP. For the duration of the Price and Services Agreements, DAS SPO may conduct periodic performance evaluations of the QA Services contractors, with input from affected OAs and Authorized Purchasers. Through each periodic evaluation, if any, DAS SPO may reconfigure or refresh the ranked array of contractors.

**21.3 BVC Process for All Other Engagements Under the PSA.** The IRSYS process will neither apply to Major IT Projects conducted by local government Authorized Purchasers, nor to any non-Major IT Projects regardless of the Authorized Purchaser's organizational structure as a state or local entity. In these engagements, Authorized Purchasers will source the desired work order contracts through a "best value" competitive process in compliance with their inherent or delegated purchasing authority and applicable procurement laws, rules and policies. Appendix G to this PSA depicts the BVC work flow

21.3.1 BVC Sourcing Strategies. Sourcing strategies for the BVC process include:<sup>1</sup>

1. Competitive Sealed Proposals;
2. Intermediate Procurements (\$5,001 to \$150,000);
3. Small Procurements (\$5,000 or less);
4. Sole Source Procurements;
5. Emergency Procurements; and
6. Special Procurements.

The BVC process is limited to the pool of QA Services contractors who hold a PSA under the RFP. The nature of the Authorized Purchaser's sourcing strategy will determine the manner in which it must engage this pool. For example, strategy 1 will invite offers from all contractors<sup>2</sup> in the pool and strategy 4 may focus on one particular contractor in the pool. Regardless of the underlying strategy, the BVC process will include a protest opportunity for aggrieved contractors in the pool.

21.3.2 Vetting BVC Offers. The BVC vetting process will be comparable to that in the IRSYS process. The Authorized Purchaser will develop and document written screening and selection criteria that detail the standard of quality, performance, functionality and other characteristics required to determine best value. The purchasing agency may consider many best value factors including without limitation:

1. operating environment and technical requirements implicated in the underlying project,
2. approach and related cost proposed for services,
3. contractor's past performance and history,
4. contractor's demonstrated skill and experience,

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<sup>1</sup> Six of the most common available sourcing methods are listed. APs may consider additional sourcing methods if available, including purchases through federal programs (ORS 279A.180) and cooperative procurements (ORS 279A.200-279A.225). Federal approval authorities typically prefer traditional competitive procurements, and they may not be willing to accept contractor selections that result from our planned IT QA Services process.

<sup>2</sup> **This is the anticipated typical strategy.** Note the following variation in the case of a State Agency Authorized Purchaser seeking QA services in connection with a Major IT Project. In this case, when the agency has rejected the ROFO contractor, or the ROFO contractor has declined the opportunity, the subsequent BVC process can exclude that particular contractor.

- 5. contractor's expertise or certification in a given specialty area, and
- 6. contractor's availability and resource capacity.

Interested contractors in the pool may submit offers in response to the screening and selection criteria identified by the purchasing agency. The Authorized Purchaser will score the responses in accordance with the screening and selection criteria, document the basis of its selection decision in the contract file and may issue a Work Order Contract to the selected contractor, adhering to any applicable administrative and legal sufficiency review requirements.<sup>3</sup>

21.3.3 BVC Protest Process. The BVC process provides for contractor selection protests. Authorized Purchasers must provide at least seven (7) calendar days from the date of an intent to select notice. Selection protests must be timely and otherwise meet the requirements of ORS 279B.410 to qualify for consideration.

21.4 **Contractor Cooperation**. Contractor agrees to cooperate in good faith with DAS, Authorized Purchasers and the other Price and Services Agreement holders to ensure an effective operation of the IRSYS and BVC processes.

22. **ORDER OF PRECEDENCE**. This Price and Services Agreement consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Price and Services Agreement, less its Attachments and Exhibits; (b) the ESOW, Price and Services Agreement Attachment A; (c) the Work Order Contract terms and conditions Attachment B, less its Exhibits; (d) the Rate Card Attachment C; (d) the RFP, Attachment D; (e) the remaining Price and Services Agreement Exhibits; and (f) the Work Order Contract Exhibits. The aforementioned Attachments and Exhibits are by this reference incorporated in the Price and Services Agreement.

**CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED UNDER THIS AGREEMENT BEFORE NECESSARY APPROVALS ARE REFLECTED IN AN EXECUTED WORK ORDER CONTRACT.**

\_\_\_\_\_

**CONTRACTOR**

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

<sup>3</sup> For example, state executive branch agencies must satisfy administrative requirements related to internal resourcing feasibility studies, information resource requests (IRR) through DAS EISPD, and legal sufficiency review requirements through the Department of Justice.

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

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

Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

**DEPARTMENT OF JUSTICE LEGAL SUFFICIENCY REVIEW AND APPROVAL**

Authorized Signature: **Legal sufficiency approval via email on 03-03-2009**

Title: Mark Williams, Senior Assistant Attorney General

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

Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_

**DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATE PROCUREMENT OFFICE**

Authorized Signature: \_\_\_\_\_

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

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

Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_

**EXHIBIT A**  
**to the Prices and Services Agreement**

**CONTRACTOR DATA AND TAX CERTIFICATION**

By signature on this Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means 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), 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.

Federal Tax Number \_\_\_\_\_

Oregon Tax Number \_\_\_\_\_

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

**EXHIBIT B  
to the Prices and Services Agreement**

**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**  
(Contractor completes if Contractor is not a corporation or is a professional corporation.)

**A. CONTRACTOR IS INDEPENDENT CONTRACTOR.**

**Contractor certifies he/she meets the following standards:**

1. I am registered 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 \_\_\_\_\_

**(DAS completes B below when Contractor completes Section A above.)**

B. AGENCY APPROVAL.

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

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

DAS Signature \_\_\_\_\_ Date \_\_\_\_\_  
**(DAS' certification is solely for DAS' benefit and internal use**

**EXHIBIT C**  
**to the Prices and Services Agreement**

CONTRACTOR'S PERSONNEL

Authorized Representative:

Other Key Persons:

**EXHIBIT D**  
**to the Prices and Services Agreement**

DAS PERSONNEL

Authorized Representative:

**Lena Ferris**

State Procurement Analyst  
DAS State Procurement Office  
1225 Ferry Street U140  
Salem, OR 97301-4285  
Office: 503-378-3001  
FAX: 503-373-1626  
[lena.ferris@state.or.us](mailto:lena.ferris@state.or.us)

**ATTACHMENT A  
to the Price and Services Agreement**

**ENTERPRISE STATEMENT OF WORK AND ITS ATTACHMENTS FROM  
RFP 102-1473-08**

**ATTACHMENT B – WORK ORDER CONTRACT TERMS AND CONDITIONS  
FOR PRICE AND SERVICES AGREEMENT # \_\_\_\_\_**

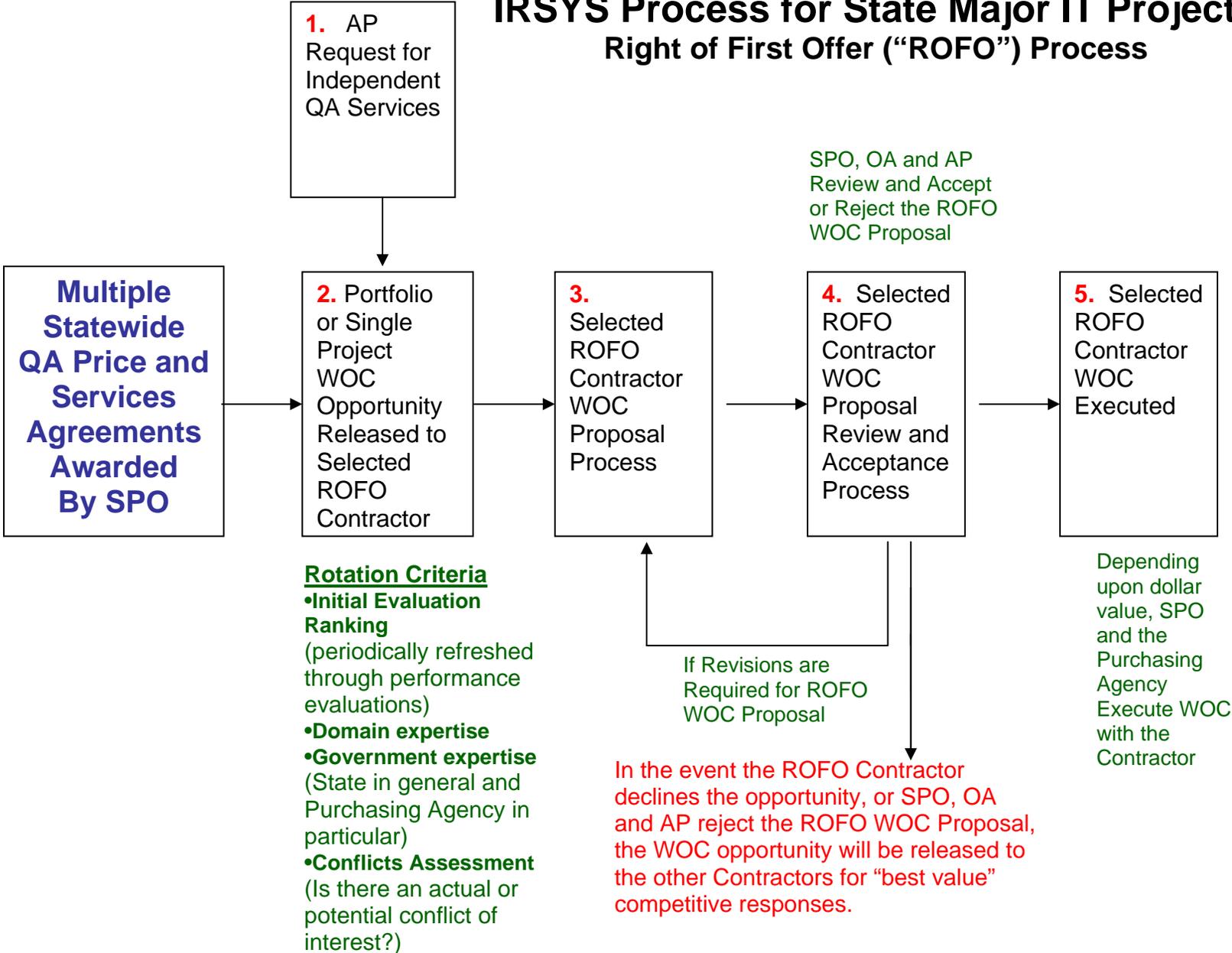
**ATTACHMENT C**  
**to the Price and Services Agreement**  
**RATE CARD**

**ATTACHMENT D**  
**to the Price and Services Agreement**  
**RFP 102-1473-08**

**ATTACHMENT E**  
**to the Price and Services Agreement**  
**CONTRACTOR'S PROPOSAL**

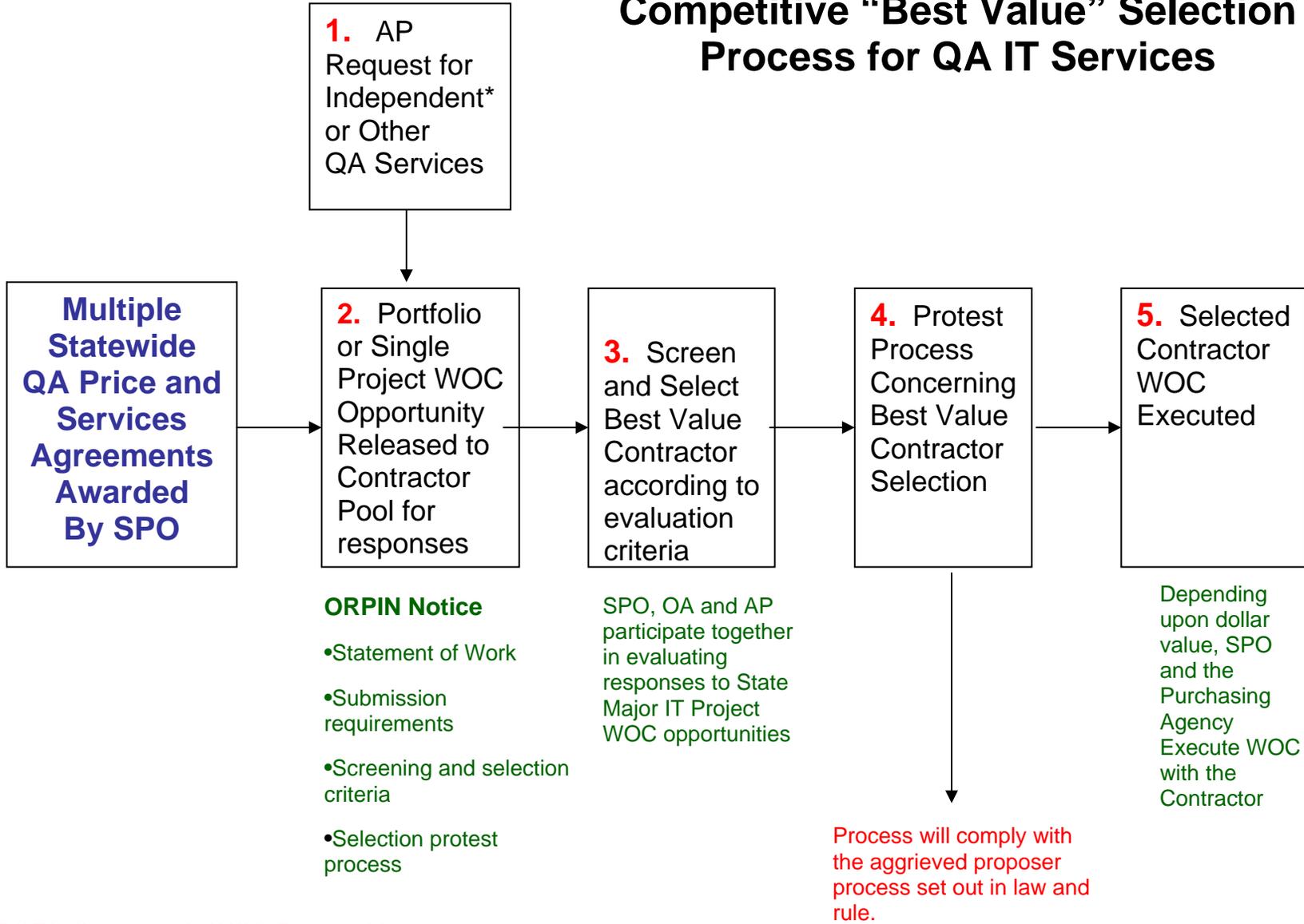
**ATTACHMENT F  
to the Price and Services Agreement**

**IRSYS Process for State Major IT Projects  
Right of First Offer (“ROFO”) Process**



**ATTACHMENT G  
to the Price and Services Agreement**

## Competitive “Best Value” Selection Process for QA IT Services



\*ROFO Contractor's WOC Proposal in State Major IT Project Rejected or ROFO Contractor declines opportunity