



Publishing & Distribution

DEPARTMENT OF ADMINISTRATIVE SERVICES

550 Airport Road SE Suite A Salem, OR 97301 | (503) 373-1700

APPLICATION FOR VENDOR BIDDING QUALIFICATION

Complete all parts of this application. Print clearly or type. Incomplete applications will be returned and result in either delays or disqualification from participating in the print procurement program.

Completed applications should be emailed to pnd_contract_reporting@das.oregon.gov

The State of Oregon, Department of Administrative Services, Enterprise Goods and Services, which includes Publishing & Distribution, maintains a list of pre-qualified Vendors to perform a variety of printing, binding, finishing, and mailing services. Approval of this application does not guarantee work with the State. Rather, it pre-qualifies Vendors for the opportunity to bid on projects.

Pre-qualification will be based on the Vendor’s response to this application, as well as the Vendor’s agreement to the State of Oregon’s terms and conditions.

Please attach all the following information or documents to this application. Incomplete applications will not be considered.

When attaching samples, please label each sample with the equipment that was used to produce the piece.

☐ Current Equipment List

☐ General Liability Insurance Coverage

☐ Samples

☐ Worker’s Compensation Insurance Coverage

☐ Taxpayer ID Number Certification

Section 1 - Business Information

Company Name			
Street Address	City	State	Zip
		Select	
Mailing Address (if different from street address)	City	State	Zip
		Select	
Phone Number	Fax Number	Person filling out application	

Section 2 - General Requirements

The State of Oregon requires superior quality and performance. To be considered, you must possess and maintain a high level of service. These general requirements are cumulative and are in addition to, not in lieu of, any other requirements found in this application or the law. Can you guarantee the following general requirements?

- | | | |
|---|--|---|
| ☐ Responsive Customer Service | ☐ Customer references | ☐ Security control measures |
| ☐ On-time delivery (in-full or partials) | ☐ Quality control process | ☐ Guaranteed response time for ITB |
| ☐ Clear communication | ☐ Timely invoicing | ☐ Financial good standing with the State of OR |

Section 3 - Contact Information

1) Name of authorized signer for bids and contracts	2) Name of authorized signer for bids and contracts
Title	Title
Phone Number	Phone Number
Email Address	Email Address
Authorized Signature	Authorized Signature

1) Primary contact for communications	2) Secondary contact for communications
Title	Title
Phone Number	Phone Number
Email Address	Email Address

Section 4 - Business Size and Classification

What is your type of business?

☐ Manufacturer ☐ Distributor / Broker ☐ Retailer

☐ Other (specify): _____

What type of printer is your business?

Please check all that apply.

☐ Digital ☐ Offset ☐ Web Offset

☐ Ink-Jet ☐ Other (specify): _____

What year did you establish your business? _____

Are you authorized to do business in Oregon?

☐ Yes

☐ No

Are you registered with the Oregon Secretary of State, Corporation Division?

☐ Yes

☐ No

If yes, what is your Business Registry Number? _____

Are you a certified firm under COBID (Certification Office for Business Inclusion and Diversity)?

☐ Yes

☐ No

If you are interested in additional information or in applying for COBID certification, please visit:

oregon.gov/biz/programs/cobid

Federal Taxpayer ID Number _____

Fill out Taxpayer ID Number and Certification (Form W-9) at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

Return form with this application.

Are you part of a union?

☐ Yes

☐ No

If yes, what Union? _____

Section 5 - References

Please provide four (4) current customers for which your business supplied satisfactory printing services.

1) Name	2) Name
Company	Company
Phone Number	Phone Number
Email Address	Email Address
Type of goods and/or services you supplied	Type of goods and/or services you supplied

3) Name	4) Name
Company	Company
Phone Number	Phone Number
Email Address	Email Address
Type of goods and/or services you supplied	Type of goods and/or services you supplied

Section 6 - Categories and Products

Check all categories and products below that your business provides and you would like to be considered for. Note: You will need to provide samples for all products selected.

CATEGORIES

☐ 2D Barcode Read Capabilities	☐ Mailing	☐ SFTP/FTP Services	☐ Variable Data Services
☐ AQ Coating	☐ Material Storage	☐ Sheetfed Printing	☐ Web Coldset Printing
☐ COBID Certified	☐ NCOA	☐ Smyth Sewn Binding	☐ Web Heatset Printing
☐ Digital Printing	☐ Perfect Binding	☐ Tab Dividers	☐ Wide Format
☐ Embossing	☐ Process Color	☐ Union Print Shop	☐ Wire-O Binding
☐ Hard Case Binding	☐ Screen Printing	☐ UV Coating	☐ Other, specify below
☐ Lamination	☐ Secure Facility	☐ UV Inks	

PRODUCTS

☐ Banners	☐ Check Stock	☐ Folders	☐ Perforation
☐ Blank Stock	☐ Decals/Clings	☐ Forms/NCR Forms	☐ Plastic Cards
☐ Books - Perfect/Case Bound	☐ Die Cut	☐ Labels/Stickers	☐ Postcards with Mailing
☐ Booklets - Saddle/Coil/GBC	☐ Door Hangers/Hang Tags	☐ License/Certificate	☐ Postcards/Rack Cards
☐ Brochures/Flyers	☐ Embedded Decals	☐ Magnets	☐ Posters
☐ Brochures/Flyers with Mailing	☐ Envelopes	☐ Map Printing	☐ Yard Signs
☐ Canvas Prints	☐ Foil Stamping	☐ Notepads	☐ Other, specify below

Section 7 - General Questions

Do you have a secure facility?

☐ Yes

☐ No

If yes, please describe your physical security measures, including any access control systems:

Please note: If you indicated above that you have a secure facility, prior to being approved for secure level projects an on-site visit may be required. At the time of the site visit P&D staff including our Security Office will assess your overall security measures, policies, and procedures to ensure they are in alignment with the State of Oregon.

Can you provide a detailed overview of your security policies and procedures?

What procedures do you have in place for the secure disposal/shredding of sensitive materials?

Do you conduct background checks on all employees who have access to sensitive information? ☐ Yes

☐ No

What procedures do you have in place for responding to security incidents or breaches?

If you offer Secure File Transfer Protocol (FTP), please describe what protocol you use:

Do you have general liability insurance for your employees?

☐ Yes

☐ No

In the past 24 months, what type and percentage of work have you brokered out?

Section 8 - Sworn Statement and Signature

I, _____, (“Authorized Signer”) declare that, to the best of my knowledge, the responses submitted in this application and any supporting documents are true and correct. I understand that any misrepresentation of myself or my business will result in ineligibility to participate in future Invitations to Bid.

☐ The Authorized Signer accepts the procedures, review criteria, and any other requirements set forth by DAS Publishing & Distribution.

Signature

Title

Printed Name

Date



State of Oregon
Department of Administrative Services • Publishing & Distribution
550 Airport Road SE Suite A - Salem, OR 97301-6084 - (503) 373-1700

AFFIDAVIT OF NON-DISCLOSURE

By signing this affidavit, _____, ("Vendor") agrees that any information provided by the State of Oregon, which includes but is not limited to, Department of Administrative Services, Enterprise Goods and Services, Publishing & Distribution, may be used solely for the purpose described in the Invitation to Bid (ITB) and shall not be shared with, transferred to, or sold to any unauthorized third party. You also attest to your business' employees, associates, and agents complying with the prohibited sharing, transfer or sale of confidential information to unauthorized third parties.

Violation of this term will result in termination of the contract and may subject the vendor to criminal prosecution.

Company/Printer Name

Signature of Authorized Representative

Date

Printed Name of Authorized Representative



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TERMS AND CONDITIONS ACKNOWLEDGEMENT

STANDARD TERMS AND CONDITIONS

_____, ("Vendor") acknowledges and agrees that all Invitations to Bid (ITB) and Requests for Quote (RFQ) issued by the State of Oregon, Publishing & Distribution will be governed by the State's Standard Terms and Conditions as defined on the pages which accompany this application. Vendor acknowledges and agrees that the State's Standard Terms and Conditions shall apply regardless of whether they are reproduced in any particular ITB or RFQ and notwithstanding, these Standard Terms and Conditions will not be reprinted in bids let by the State of Oregon.

SPECIAL TERMS AND CONDITIONS

_____, ("Vendor") acknowledges and agrees that, in addition to and not in lieu of the State of Oregon Standard Terms and Conditions, Special Terms and Conditions also apply and are specific to the Department of Administrative Services, Enterprise Goods and Services, Publishing & Distribution. These Special Terms and Conditions are defined on the pages which accompany this application. Vendor acknowledges and agrees that the Publishing & Distribution Special Terms and Conditions shall apply regardless of whether they are reproduced in any particular Invitation to Bid.



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P&D TERMS AND CONDITIONS

1. **CONFERENCE:** Successful vendor required to meet with agency in person at agency site in Salem Oregon to discuss various project issues within five (5) business days from contract award. Vendor must provide a knowledgeable project manager who is responsible for all contact with the State of Oregon Publishing & Distribution.
2. **PUBLISHING & DISTRIBUTION STANDARD TERMS AND CONDITIONS:** Bidder acknowledges and agrees that this contract is governed by DAS' Standard Terms and Conditions as defined in this document.
3. **EARLY DELIVERY:** An early delivery date is required. Delivery may be a factor in determining award. The State reserves the right to accept the bid deemed in the best interest of the State with consideration of price, delivery time, quality of the product, method of construction, and performance.
4. **EXACT QUANTITY:** Because of agency budget limitations, the quantity stated in the Invitation to Bid is the exact quantity desired. Therefore, underruns or overruns may not be accepted. The responsibility for this determination rests solely with the State Publishing and Distribution.
5. **LIQUIDATED DAMAGES:** As the failure of the bidder to deliver the order specified herein in accordance with the terms of this agreement will, because of the urgent need, cause serious and substantial damages to the State, and it will be difficult, if not impossible, to prove the amount of such damages, the bidder agrees that for each and every calendar day or part thereof this contract remains incomplete beyond the delivery date specified in the bid for its completion (unless such as been mutually extended in writing and signed by the parties) the bidder shall pay to the state the sum of \$150.00 as liquidated damages and not as a penalty. The said sum may be deducted, at the option of the State, from money due or to become due to the bidder under this agreement.

A written assent by the State to any extension of the specified delivery date shall constitute a waiver only to that particular extension and not a waiver of any other subsequent extension of the delivery date and shall not operate to bar or prevent enforcement and collection of liquidated damages for late delivery as provided herein except for any extension specifically waived. If the delivery date be waived, such waiver shall in no manner affect the rights and obligations of the parties under this contract.

6. **ADHERENCE TO SPECIFICATIONS:** Signing and submitting a bid indicates that the bidder accepts the terms and conditions of the solicitation and agrees to be bound by them. The State of Oregon shall require the bidder to comply with such terms and conditions and shall hold the bidder to each and every part of the specifications.
7. **PROPER PRODUCT PERFORMANCE:** It shall be the responsibility of the contractor to ensure through visits to and consultation with the agencies by qualified persons, that the material supplied under this contract will perform satisfactorily.

8. **SECURITY CERTIFICATION:** The materials covered in this Invitation to Bid are described by the State of Oregon as negotiable security documents. The vendor hereby certifies that if we award this contract, all resulting State of Oregon plates, negatives and artwork shall be stored in a locked security area at its plant until their return after production and that all reproductions which are not shipped to the state shall be destroyed. The vendor also certifies that only authorized persons shall be given access to the aforementioned plates, negatives and prints. The vendor assumes full responsibility for forms described herein until delivered to and receipted at the address indicated in delivery instructions.
9. **INSPECTION OF COPY:** For more detailed specifications and inspection of (artwork, copy, negatives or layout) prospective bidders are invited to view the materials on display at the State Publishing and Distribution, Salem. Submission of a bid response is construed as tacit acknowledgement that the vendor has reviewed the material on display and has a thorough understanding of the characteristics of the job to be produced.
10. **PROCESS COLOR:** All work shall be EXCELLENT as described in Franklin Offset Catalog. Successful bidder may be required to furnish samples of four color printing produced in its plant. Failure to supply satisfactory samples may result in rejection of bid.
11. **EXCELLENT QUALITY:** Quality of composition, printing, and bindery work must be EXCELLENT in all respects as defined in the Franklin Offset Catalog. A rejection rate of one percent is considered abnormal. Rejection will be made for upside down signatures, missing or duplication of signatures, creases on the printed page, uneven inking, signatures out of sequence, crooked trimming and binding.
12. **STATE LIBRARY:** This order includes 45 copies for library distribution as provided in ORS 182.070. *Note: Vendor is required to deliver 45 copies to the State Library • 250 Winter St NE • Salem OR 97310. The balance of the order is to deliver to the location specified in this invitation to bid.
13. **BID SAMPLE:** Samples must be furnished free of charge or freight to the State of Oregon. Each sample must be clearly labeled with bid number and bidder's name.
14. **PERFORMANCE BOND:** Upon notification of award, the successful bidder shall be required to furnish within ten working days a performance bond in an amount equal to 100% of the contract price, executed in favor of the state to insure faithful performance of the contract.
15. **DEVIATIONS:** The detailed requirements listed in this specification are to establish the description, quality and performance desired. Differences in details may be acceptable when similar quality and performance are offered.
16. **BRAND NAMES:** Any brand names or trade names used in the solicitation specifications are for the purpose of describing and establishing standards of quality and performance and characteristics desired. Such brand names or trade names are not intended to limit or restrict competition. Bidders may submit bids for products substantially equivalent to those specified unless the solicitation expressly provides that only a particular brand or product is acceptable. All proposed brand and product substitution shall be subject to the state's approval.
17. **OUT-OF-STATE CONTRACTOR REQUIREMENTS:** State law (ORS 60.701, et seq.) requires all foreign corporations to register with the State Corporations Commissioner unless they are transacting business in interstate commerce or unless they are conducting an isolated transaction to be completed within a period of 30 days and not in the course of a number of repeated transactions of like nature. A foreign corporation is "one who is not domiciled in or registered to do business in the State of Oregon."

Out-of-state firms offering bids for the requirements herein must indicate on their bids whether they are or are not registered with the State Corporation Commissioner.

Also, foreign corporations receiving state contracts exceeding \$10,000.00 are required to promptly report to the State Department of Revenue, upon forms furnished with their contract (ORS 279A.120). The ordering agency will withhold final payment until this requirement has been accomplished.

- 18. IBM 3900 REQUIREMENTS:** Contractor must guarantee that all forms shall be processable on IBM 3900 series printer and shall meet all IBM systems requirements as to special ink, paperweight, quality, design, and packaging. Any forms not meeting IBM 3900 specifications shall be immediately reprinted at the expense of the contractor.
- 19. RENEWAL:** At the option of the State, the contract may, on 30 days written notice to the contractor, be extended for additional periods. The total term of the contract, including extensions, may not exceed five (5) years. The agreement, if extended by exercise of the State's option to renew, may be cancelled at any time during the extended period without penalty by either the State or the vendor, upon presentation of 30 days written notice.
- 20. ESCALATION:** Escalation on paper stock only will be allowed if the following conditions are met: The vendor will be reimbursed for the amount of the actual net dollar increase in the cost of stock occurring after the award of the contract if the vendor, within ten days after award of the contract, furnishes documentation by the paper wholesaler of the price used in submitting the bid and states the amount of stock required to the Department of Administrative Services print buyer. He must again submit documentation of price of stock at the time of request for escalation. It is understood that any decrease in the cost of paper stock must also be offered to the State of Oregon. The state shall have the option of accepting the price change or cancelling the contract. The escalation provision is offered by the State of Oregon in consideration of the current paper industry market conditions.
- 21. ESTIMATED AMOUNT:** Quantities purchased by the state during the previous year are indicated. These figures are intended to serve only as a bidding guide. The state does not guarantee that this amount or any amount will be purchased.
- 22. PROTEST OF REQUIREMENTS:** Protest of the requirements or requests for non-substantive or procedural changes to the contractual provisions contained in the Invitation to Bid shall be in writing and delivered to the Department of Administrative Services Printing Division no later than 14 days after issuance of the Invitation to Bid. Protest of requirements or contractual provisions shall include the reason for the protest, and any proposed changes to the requirements.

The purpose of this requirement is to permit the State to correct, prior to the opening of the Invitation to Bid, any contractual requirements that may be unlawful, improvident, or which unjustifiably may restrict competition. This requirement, by permitting corrections prior to the opening of proposals, will eliminate the waste inherent in protests and in the possible rejection of all bids. In order for complaints to be considered, they must be submitted within the time established in this item. State shall not at any subsequent time consider a Bidder's objections to requirements or specifications unless those objections have been timely presented to the State under this item.

The State will consider all requested changes and, if appropriate, amend the Invitation to Bid.

- 23. METHOD OF AWARD:** The contract shall be awarded to the lowest responsive, responsible bidder. Prompt delivery is requested and may be factor in determining contract award. Bidders shall indicate firm delivery date (date agency will receive the finished job). The State will reject any bid in which the specified delivery date is more than fourteen (14) calendar days after requested delivery date. The division reserves the right to select the bid deemed in the best interests of the State, considering price, delivery time, product quality and construction, and performance.

Recycled stock receives a 5% preference and in-state vendors receive a 10% preference.

- 24. PREMIUM QUALITY:** Quality of composition, printing, and bindery work must be premium in all respects (images are clear, crisp and ink coverage consistent throughout the run; halftones have excellent contrast and sharpness with good detail; registration is critical and tight, no hickies or other flaws; photographs match originals or match prints; folding and trimming are square with +/- 1/64" variance).

25. METHOD OF AWARD: The contract shall be awarded to the lowest responsive, responsible bidder. Basic bid plus the cost of option, plus: 1) the hourly personnel rate of \$21.00/hour multiplied by the time required to travel from the agency delivery point to the vendor's plant and return, plus 2) 45 cents per mile for each mile from the agency's office to the vendor's plant and return. For method of award purposes, travel time will be figured using the average of 60 mph (highway average) multiplied by the number of miles. This travel rate is used for the method of award purpose only. Prompt delivery is requested and may be factor in determining contract award. Bidders shall indicate firm delivery date (date agency will receive the finished job). The State will reject any bid in which the specified delivery date is more than fourteen (14) calendar days after requested delivery date. The division reserves the right to select the bid deemed in the best interests of the State, considering price, delivery time, product quality and construction, and performance.

26. Composition Requirements: Vendor will be required to use provide camera ready copy, negative(s), and or electronic files. If the vendor recreates (typesets) or modifies supplied materials in any way other than as indicated in the bid specifications, it is the vendor's responsibility to notify the contract administrator before proceeding.

27. TERMINATION OF EXTENSION PERIOD: The agreement, if extended by exercise of the State's option to renew, may be canceled at any time during the extended period without penalty by either the State or the Contractor, upon presentation of 30 days written notice.

28. DELIVERY CONFIRMATION: When a job has completed printing - vendor required to send an email acknowledgment that the job has shipped. Vendors are to follow these basic guidelines when a job is completed and ready to ship. Send an email to: PnD.PrintContracts@oregon.gov. The customer contact email listed on the bid. For the subject line, include the order number and order description. For example: Shipment Acknowledgement for Order (List Order # Here) – (List Order Name Here). For the body of the email, please make sure the following information is included:

Order:
Description:
Qty. Shipped:
Deadline Met? (This would be Yes or No)
If no, what was the reason why the deadline was not met?

29. PROOF REQUIREMENTS: Vendor required to produce, or have produced, a screen optimized PDF of the entire job being printed. The PDF must be created using the "screen" optimized default settings in Acrobat Distiller. The pages must run consecutively from cover to back cover if applicable. The document properties summaries must include:

Title: Title of the job;

Author: Agency for which the job is being produced.

Name the job the Print Order number (#####.PDF) and send it to Publishing & Distribution for posting on our FTP site.

You may send it via e-mail to order.info@das.state.or.us . In the subject line put "##### (job number) ORS 282 PDF from vendor".

30. ELECTRONIC FILES/NEGATIVES/FLATS: All negatives, flats, separations, electronic files, art work and the latest versions of files used in the production of this project become the property of the State of Oregon. Vendor is required to return a CD with each and every electronic file reflecting the latest version whether submitted by FTP or on disc. All negatives and CD's must be returned within 30 days of completion of printing to Publishing & Distribution, 550 Airport Rd SE, Salem OR 97301. Lost or damaged photographs shall be compensated by the bidder at rates recommended by the American Society of Magazine Photographers.

31. ADDITIONAL CHARGES/CHANGES: If a change is made to the order that affects the cost, specifications or final delivery date of the order, the vendor must send a change notice request in writing to the buyer prior to proceeding with the change. The change order request must include the reason for the change, the Bid number and the proposed new delivery date and total price. The buyer may request additional information concerning the change order request. If the process is not followed, the agencies may not be responsible for any additional costs not covered in the original purchase order.

32. RECYCLED PREFERENCE: In accordance with ORS 279A.010 (gg) (A & B) for vendors to receive the 5% recycled preference for Method of Award the stock MUST contain:

(gg) "Recycled paper" means a paper product with not less than:

(A) Fifty percent of its fiber weight consisting of secondary waste materials;

or

(B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

STATE of OREGON

Standard Terms and Conditions for Services

1. STATEMENT OF WORK: Contractor shall perform the Services in accordance with the schedule set forth in the Statement of Work.

2. ACCEPTANCE OF DELIVERED SERVICES: Agency shall accept or reject each deliverable. If Agency rejects the deliverable, then Agency shall give Contractor a written notice of the reasons for the rejection and the method for curing, if any.

3. PAYMENT: (a) Contractor shall send invoices to Agency at Agency's address, including details and at a frequency as agreed upon with Agency. Contractor's invoice shall include at a minimum: the Contract number; Services performed, Service dates, what was delivered, the rates (as applicable), the total amount due, and the payment address. (b) Agency shall pay Contractor, in accordance with the Compensation and Payment Methodology, for Services delivered under this Contract and accepted by Agency. Contractor shall look solely to Agency for payment. Contractor shall not be compensated by anyone else. (c) Contractor agrees that Agency's payment is contingent on Agency receiving enough funding and other expenditure authority to allow the payment. (d) Contractor's claims to Agency for overdue payments on invoices are subject to ORS 293.462.

4. TERMINATION: The parties may terminate this Contract at any time by mutual written consent. Agency may terminate this Contract for its convenience upon written notice to Contractor. Agency or Contractor may terminate this Contract immediately or at a later designated date upon written notice to the other party, if the other party is in breach. Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor.

5. RECOVERY OF OVERPAYMENTS: IF BILLINGS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND AGENCY, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, AGENCY, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD SUCH AMOUNTS FROM PAYMENTS DUE TO CONTRACTOR.

6. INDEMNIFICATION: CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND (SUBJECT TO ORS CHAPTER 180) THE STATE OF OREGON, AGENCY AND THEIR OFFICERS, EMPLOYEES, AGENTS, FROM ALL CLAIMS, SUITS OR ACTIONS OF ANY NATURE ARISING OUT OF OR RELATED TO THE ACTIVITIES OF CONTRACTOR, OR ITS OFFICERS, SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT.

7. GOVERNING LAW, JURISDICTION, AND VENUE: This Contract is governed by Oregon law, without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between the State of Oregon and the Contractor that relates to this Contract ("Claim") shall be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it shall be heard exclusively in the US District Court for the District of Oregon. In no way will this Section or any other provision of this Contract be construed as a waiver by the State of Oregon of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court. Contractor consents to the in personam jurisdiction of these courts.

8. FORCE MAJEURE: No party is responsible for delay or default caused by an event beyond its reasonable control. The Agency may terminate this Contract without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this Contract.

9. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract in whole or in part, without the prior written approval of the Agency. This Contract's provisions are binding upon and inure to the benefit of the parties to the Contract and their respective successors and assigns.

10. ACCESS TO RECORDS: Contractor shall maintain all accounting records relating to this Contract according to GAAP. Contractor shall retain its accounting records and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant the State of Oregon and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives' access to the Records, including reviewing, auditing, copying, and making transcripts.

11. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS: Contractor shall comply with all federal, state and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the performance of the Services, as such laws, regulations, executive orders, and ordinances may be adopted, amended, or repealed from time to time. These

laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. Agency's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.230, and 279B.235 incorporated by reference herein.

12. OWNERSHIP OF WORK PRODUCT: Every invention, discovery, work of authorship and other tangible or intangible item that Contractor is required to deliver to Agency under this Contract (collectively, "Work Product") shall be the exclusive property of Agency. Agency and Contractor agree that all Work Product is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason any Work Product is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall acquire such further rights and execute such further documents and instruments as are necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

13. AMENDMENTS; WAIVER: All amendments to this Contract must be in writing, signed by the both parties. The Agency's failure to enforce any provision of this Contract is not a waiver or relinquishment by the Agency of its rights to such performance in the future or to enforce any other provisions.

14. SEVERABILITY: If a court of competent jurisdiction declares any provision of this Contract to be illegal or in conflict with law, the parties intend that the validity of the remaining terms and provisions not be affected, and that the rights and obligations of the parties be construed and enforced as if the Contract did not contain the particular terms of provision held to be invalid.

15. AWARD TO FOREIGN CONTRACTOR: If Contractor is not registered to do business or has no office 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 Contract. The Agency may withhold final payment under this Contract until Contractor has met this requirement.

16. INDEPENDENT CONTRACTOR: Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by performance of this Contract, represents and warrants that Contractor's Services to be performed under this Contract create no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's performance under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract, and unless Contractor is subject to backup withholding, Agency will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or worker's compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual. Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services and any Work Product, but Agency may not 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 Services. Contractor is an independent contractor as defined in ORS 670.600.

17. BREACH: (a) Contractor breaches this Contract if Contractor: (i) ceases doing business on a regular basis, including but not limited to ceasing to do business as a result of insolvency, receivership, bankruptcy proceedings, or an assignment for the benefit of creditors; (ii) no longer holds a required license or certificate for Contractor's performance; or (iii) commits any material breach under this Contract, and Contractor fails to cure any such breach as Agency may specify in the notice of breach. (b) Agency breaches this Contract if Agency: (i) fails to pay Contractor any amount owed under this Contract; or (ii) commits any material breach under this Contract, and Agency fails to cure any such breach as Contractor may specify in the notice of breach.

18. AGENCY REMEDIES: If Contractor is in breach under Section 17(a), Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) termination of this Contract under Section 4, (b) reducing or withholding payment for Services or Work Product that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Contractor to perform, at Contractor's expense, additional work necessary to perform the Statement of Work or meet performance standards, (d) suspending Contractor's performance of the Services, (e) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (f) exercise of its right of recovery of overpayments under Section 5 of this Contract or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

19. CONTRACTOR REMEDIES: (a) If Agency is in breach under Section 17(b), and whether or not Contractor elects to exercise its right to terminate the Contract under Section 4, Contractor's sole monetary remedy shall be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Services, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor.

20. INTENDED BENEFICIARIES: State and Contractor are the only parties to this Contract and the only parties entitled to enforce the Contract.

21. INFORMATION PRIVACY/SECURITY/ACCESS: If the Services performed under this Contract require Contractor or, when allowed, its subcontractor(s), to have access to or use of any Agency computer system or other Agency Information Asset or Network and Information System for which Agency imposes security requirements, and Agency grants Contractor or its subcontractor(s) access to such Agency Information Assets or Network and Information Systems, Contractor shall comply, and require all subcontractor(s) to which Agency has granted such access to comply, with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

22. MERGER CLAUSE/COUNTERPARTS: This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representation, oral or written, not specified herein, regarding this Contract. Any amendments to this 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 an amendment so executed shall constitute an original.

23. FUNDS AVAILABLE AND AUTHORIZED: Contractor shall not be compensated for Services performed under this Contract by any other agency of the State of Oregon or the federal government. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within Agency's current biennial appropriation or limitation. marketplace is less than the 24-month period described above, then Contractor

shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this Section 8.

Contractor understands and agrees that Agency's payment for Services performed is contingent on Agency receiving appropriations, limitations, allotments and other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

24. REPRESENTATIONS AND WARRANTIES: Contractor represents and warrants to Agency that: (a) Contractor has the power and authority to enter into and perform this Contract, (b) the obligations set forth herein are valid and binding obligations of Contractor enforceable in accordance with its terms, (c) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession (d) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services, and (e) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

25. NOTICES: Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Contractor or Agency at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this section. Any notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number set forth in this Contract. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

26. TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence in Contractor's performance of the Services under this Contract.

27. SURVIVAL: In addition to any provisions of this Contract that by their express terms survive termination of this Contract, the confidentiality provisions of Exhibit A and the following provisions of Exhibit B shall remain in effect beyond any Contract termination or full performance: 3, 5, 6, 7, 10, 11, 12, 16, 17, 18, 19, 20, 23, 24, 25, 27 and 28.

28. LIMITATION OF LIABILITIES: THE STATE OF OREGON SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR RELIANCE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST DATA, OR HARM TO BUSINESS), REGARDLESS OF THE FORSEEABILITY THEREOF, ARISING OUT OF OR RELATED TO THIS CONTRACT. CONTRACTOR HEREBY RELEASES THE STATE OF OREGON AND ITS AGENCIES AND THEIR DIVISIONS, OFFICERS, EMPLOYEES, AGENTS AND MEMBERS FROM ANY SUCH CLAIMS.

EXHIBIT D

Required Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Contract, to Contractor, or to the Services, or to any combination of the foregoing. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** Contractor shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Contract or to the performance of the Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (f) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (g) all regulations and administrative rules established pursuant to the foregoing laws, (h) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (i) all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. No federal funds may be used to perform the Services in violation of 42 U.S.C. 14402.
2. **Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
3. **Energy Efficiency.** Contractor shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94 163).
4. **Truth in Lobbying.** By signing this Contract, the Contractor certifies, to the best of the Contractor's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers

(including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

- d. This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
 - f. No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
5. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
 6. **Agency-based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
 7. **Resource Conservation and Recovery.** Contractor shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
 8. **Audits and associated fiscal responsibilities under this Contract.** Contractor shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 9. **Debarment and Suspension.** Contractor shall not be, nor shall Contractor permit any person or entity to be through a subcontractor relationship with the Contractor, listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and

Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- 10. Drug-Free Workplace.** Contractor shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor's workplace or while providing services to Agency clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify Agency within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents or subcontractors may provide any service required under this Contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to Agency clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Contract.

- 11. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Services under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:
- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work Product, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work Product developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.